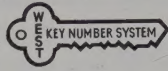


WORDS AND PHRASES™

PERMANENT EDITION



Volume 26B

MATERIAL — MAXWELL HEARING

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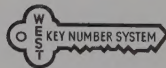
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WORDS AND PHRASES

"A word is not crystal, transparent and unchanging, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

*Justice Holmes,
245 U.S. 418, 38 S.Ct.
158, 62 L.Ed.2d 372.*

The interpretation or meaning attributed to a word or a phrase in a statute, court rule, administrative regulation, business document or agreement often determines rights, duties, obligations and liabilities thereunder or a controversy between parties.

The courts, state and federal, determine the meaning given to words and to phrases in issue in the context of specific facts and particular issues. New developments in the economic, political and social life of the nation are reflected in the laws and in the kinds of controversies which the courts are called upon to resolve. The result is frequently that in judicial opinions established words and phrases acquire new significance or relevance.

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Through modern pocket part supplementation, all of the new judicial constructions and interpretations of words and phrases are promptly supplied as they become available from the decisions of the courts of the nation.

THE PUBLISHER

June, 2003

ABBREVIATIONS

Aband L P	Abandoned and Lost Property.	Banks	Banks and Banking.
Abate & R	Abatement and Revival.	Ben Assoc	Beneficial Association.
Abort	Abortion and Birth Control.	Big	Bigamy.
Absentees	Absentees.	Bills & N	Bills and Notes.
Abstr of T	Abstracts of Title.	Bonds	Bonds.
Accession	Accession.	Bound	Boundaries.
Accord	Accord and Satisfaction.	Bounties	Bounties.
Acct	Account.	Breach of M P	Breach of Marriage Promise.
Acct Action on	Account, Action on.	Breach of P	Breach of the Peace.
Acct St	Account Stated.	Brib	Bribery.
Accnts	Accountants.	Bridges	Bridges.
Ack	Acknowledgment.	Brok	Brokers.
Action	Action.	B & L Assoc	Building and Loan Associations.
Action on Case	Action on the Case.	Burg	Burglary.
Adj Land	Adjoining Landowners.	Canals	Canals.
Admin Law	Administrative Law and Procedure.	Can of Inst	Cancellation of Instruments.
Adm	Admiralty.	Carr	Carriers.
Adop	Adoption.	Cem	Cemeteries.
Adulteration	Adulteration.	Census	Census.
Adultery	Adultery.	Cert	Certiorari.
Adv Poss	Adverse Possession.	Champ	Champerly and Maintenance.
Afft	Affidavits.	Char	Charities.
Agric	Agriculture.	Chat Mtg	Chattel Mortgages.
Aliens	Aliens.	Chem Dep	Chemical Dependents.
Alt of Inst	Alteration of Instruments.	Child C	Child Custody.
Amb & C	Ambassadors and Consuls.	Child S	Child Support.
Am Cur	Amicus Curiae.	Child	Children Out-of-Wedlock.
Anim	Animals.	Citiz	Citizens.
Annuities	Annuities.	Civil R	Civil Rights.
App & E	Appeal and Error.	Clerks of C	Clerks of Courts.
Appear	Appearance.	Clubs	Clubs.
Arbit	Arbitration.	Colleges	Colleges and Universities.
Armed S	Armed Services.	Collision	Collision.
Arrest	Arrest.	Commerce	Commerce.
Arson	Arson.	Com Fut	Commodity Futures Trading Regulation.
Assault	Assault and Battery.	Com Lands	Common Lands.
Assign	Assignments.	Com Law	Common Law.
Assist	Assistance, Writ of.	Comp Off	Compounding Offenses.
Assoc	Associations.	Compromise	Compromise and Settlement.
Assumpsit	Assumpsit.	Condo	Condominium.
Asyl	Asylums.	Confusion of G	Confusion of Goods.
Attach	Attachment.	Consp	Conspiracy.
Atty & C	Attorney and Client.	Const Law	Constitutional Law.
Atty Gen	Attorney General.	Cons Cred	Consumer Credit.
Auctions	Auctions and Auctioneers.	Cons Prot	Consumer Protection.
Aud Quer	Audita Querela.	Contempt	Contempt.
Autos	Automobiles.	Contracts	Contracts.
Aviation	Aviation.	Contrib	Contribution.
Bail	Bail.		
Bailm	Bailment.		
Bankr	Bankruptcy.		

ABBREVIATIONS

Controlled Subs	Controlled Substances.	Exceptions Bill of	Exceptions, Bill of.
Conversion	Conversion.	Exch of Prop	Exchange of Property.
Convicts	Convicts.	Exchanges	Exchanges.
Copyr	Copyrights and Intellectual Property.	Execution	Execution.
Coroners	Coroners.	Ex & Ad	Executors and Administrators.
Corp	Corporations.	Exempt	Exemptions.
Costs	Costs.	Explos	Explosives.
Counterfeit	Counterfeiting.	Extort	Extortion and Threats.
Counties	Counties.	Extrad	Extradition and Detainers.
Court Comrs	Court Commissioners.	Fact	Factors.
Courts	Courts.	False Imp	False Imprisonment.
Cov Action of	Covenant, Action of.	False Pers	False Personation.
Covenants	Covenants.	False Pret	False Pretenses.
Cred R A	Credit Reporting Agencies.	Fed Civ Proc	Federal Civil Procedure.
Crim Law	Criminal Law.	Fed Cts	Federal Courts.
Crops	Crops.	Fences	Fences.
Cust & U	Customs and Usages.	Ferries	Ferries.
Cust Dut	Customs Duties.	Fines	Fines.
Damag	Damages.	Fires	Fires.
Dead Bodies	Dead Bodies.	Fish	Fish.
Death	Death.	Fixt	Fixtures.
Debt Action of	Debt, Action of.	Food	Food.
Debtor & C	Debtor and Creditor.	Forci E & D	Forceful Entry and Detainer.
Decl Judgm	Declaratory Judgment.	Forfeit	Forfeitures.
Dedi	Dedication.	Forg	Forgery.
Deeds	Deeds.	Franch	Franchises.
Dep & Escr	Deposits and Escrows.	Fraud	Fraud.
Dep in Court	Deposits in Court.	Frds St of	Frauds, Statute of.
Des & Dist	Descent and Distribution.	Fraud Conv	Fraudulent Conveyances.
Detectives	Detectives.	Game	Game.
Detinue	Detinue.	Gaming	Gaming.
Disorderly C	Disorderly Conduct.	Garn	Garnishment.
Disorderly H	Disorderly House.	Gas	Gas.
Dist & Pros Attys	District and Prosecuting Attorneys.	Gifts	Gifts.
Dist of Col	District of Columbia.	Good Will	Good Will.
Distur of Pub A	Disturbance of Public Assemblage.	Gr Jury	Grand Jury.
Divorce	Divorce.	Guar	Guaranty.
Domicile	Domicile.	Guard & W	Guardian and Ward.
Double J	Double Jeopardy.	Hab Corp	Habeas Corpus.
Dower & C	Dower and Curtesy.	Hawk & P	Hawkers and Peddlers.
Drains	Drains.	Health	Health.
Ease	Easements.	High	Highways.
Eject	Ejectionment.	Holidays	Holidays.
Elect of Rem	Election of Remedies.	Home	Homestead.
Elections	Elections.	Homic	Homicide.
Electricity	Electricity.	Hus & W	Husband and Wife.
Embez	Embezzlement.	Impl & C C	Implied and Constructive Contracts.
Em Dom	Eminent Domain.	Improv	Improvements.
Emp Liab	Employers' Liability.	Incest	Incest.
Entry Writ of	Entry, Writ of.	Indem	Indemnity.
Environ Law	Environmental Law.	Indians	Indians.
Equity	Equity.	Ind & Inf	Indictment and Information.
Escape	Escape.	Infants	Infants.
Escheat	Escheat.	Inj	Injunction.
Estates	Estates in Property.	Inn	Innkeepers.
Estop	Estoppel.	Inspect	Inspection.
Evid	Evidence.		

ABBREVIATIONS

Insurance	Insurance.	Obscen	Obscenity.
Insurrect	Insurrection and Sedition.	Obst Just	Obstructing Justice.
Interest	Interest.	Offic	Officers and Public Employees.
Int Rev	Internal Revenue.	Pardon	Pardon and Parole.
Intern Law	International Law.	Parent & C	Parent and Child.
Interpl	Interpleader.	Parl Law	Parliamentary Law.
Int Liq	Intoxicating Liquors.	Parties	Parties.
Joint Adv	Joint Adventures.	Partit	Partition.
Joint-St Co	Joint-Stock Companies and Business Trusts.	Partners	Partnership.
Joint Ten	Joint Tenancy.	Party W	Party Walls.
Judges	Judges.	Pat	Patents.
Judgm	Judgment.	Paymt	Payment.
Jud S	Judicial Sales.	Penalties	Penalties.
Jury	Jury.	Pensions	Pensions.
J P	Justices of the Peace.	Perj	Perjury.
Kidnap	Kidnapping.	Perp	Perpetuities.
Labor	Labor Relations.	Pilots	Pilots.
Land & Ten	Landlord and Tenant.	Plead	Pleading.
Larc	Larceny.	Plgs	Pledges.
Levees	Levees and Flood Control.	Poss Warr	Possessory Warrant.
Lewd	Lewdness.	Postal	Postal Service.
Libel	Libel and Slander.	Powers	Powers.
Licens	Licenses.	Pretrial Proc	Pretrial Procedure.
Liens	Liens.	Princ & A	Principal and Agent.
Life Est	Life Estates.	Princ & S	Principal and Surety.
Lim of Act	Limitation of Actions.	Prisons	Prisons.
Lis Pen	Lis Pendens.	Priv Roads	Private Roads.
Logs	Logs and Logging.	Proc	Process.
Lost Inst	Lost Instruments.	Prod Liab	Products Liability.
Lotteries	Lotteries.	Prohib	Prohibition.
Mal Mis	Malicious Mischief.	Propty	Property.
Mal Pros	Malicious Prosecution.	Prost	Prostitution.
Mand	Mandamus.	Pub Contr	Public Contracts.
Manuf	Manufactures.	Pub Lands	Public Lands.
Mar Liens	Maritime Liens.	Pub Ut	Public Utilities.
Marriage	Marriage.	Quiet T	Quieting Title.
Mast & S	Master and Servant.	Quo W	Quo Warranto.
Mayhem	Mayhem.	RICO	Racketeer Influenced and Corrupt Organizations.
Mech Liens	Mechanics' Liens.	R R	Railroads.
Mental H	Mental Health.	Rape	Rape.
Mil Jus	Military Justice.	Real Act	Real Actions.
Militia	Militia.	Receivers	Receivers.
Mines	Mines and Minerals.	Rec S Goods	Receiving Stolen Goods.
Monop	Monopolies.	Recogn	Recognizances.
Mtg	Mortgages.	Records	Records.
Motions	Motions.	Refer	Reference.
Mun Corp	Municipal Corporations.	Ref of Inst	Reformation of Instruments.
Names	Names.	Reg of Deeds	Registers of Deeds.
Nav Wat	Navigable Waters.	Release	Release.
Ne Ex	Ne Exeat.	Relig Soc	Religious Societies.
Neglig	Negligence.	Remaind	Remainders.
Neut Laws	Neutrality Laws.	Rem of C	Removal of Cases.
Newsp	Newspapers.	Replev	Replevin.
New Tr	New Trial.	Reports	Reports.
Notaries	Notaries.	Rescue	Rescue.
Notice	Notice.	Revers	Reversions.
Nova	Novation.	Review	Review.
Nuis	Nuisance.		
Oath	Oath.		

ABBREVIATIONS

Rewards	Rewards.	Tender	Tender.
Riot	Riot.	Territories	Territories.
Rob	Robbery.	Theaters	Theaters and Shows.
Sales	Sales.	Time	Time.
Salv	Salvage.	Torts	Torts.
Schools	Schools.	Towage	Towage.
Sci Fa	Scire Facias.	Towns	Towns.
Seals	Seals.	Trade Reg	Trade Regulation.
Seamen	Seamen.	Treason	Treason.
Searches	Searches and Seizures.	Treaties	Treaties.
Sec Tran	Secured Transactions.	Tresp	Trespass.
Sec Reg	Securities Regulation.	Tresp to T T	Trespass to Try Title.
Seduct	Seduction.	Trial	Trial.
Sent & Pun	Sentencing and Punishment.	Trover	Trover and Conversion.
Sequest	Sequestration.	Trusts	Trusts.
Set-Off	Set-Off and Counterclaim.	Turnpikes	Turnpikes and Toll Roads.
Sheriffs	Sheriffs and Constables.	Undertak	Undertakings.
Ship	Shipping.	U S	United States.
Sig	Signatures.	U S Mag	United States Magistrates.
Slaves	Slaves.	U S Mar	United States Marshals.
Social S	Social Security and Public Welfare.	Unlawf Assemb	Unlawful Assembly.
Sod	Sodomy.	Urb R R	Urban Railroads.
Spec Perf	Specific Performance.	Usury	Usury.
Spendthrifts	Spendthrifts.	Vag	Vagrancy.
States	States.	Ven & Pur	Vendor and Purchaser.
Statut	Statutes.	Venue	Venue.
Steam	Steam.	War	War and National Emergency.
Stip	Stipulations.	Wareh	Warehousemen.
Submis of Con	Submission of Controversy.	Waste	Waste.
Subrog	Subrogation.	Waters	Waters and Water Courses.
Subscrip	Subscriptions.	Weap	Weapons.
Suicide	Suicide.	Weights	Weights and Measures.
Sunday	Sunday.	Wharves	Wharves.
Supersed	Supersedeas.	Wills	Wills.
Tax	Taxation.	Witn	Witnesses.
Tel	Telecommunications.	Woods	Woods and Forests.
Ten in C	Tenancy in Common.	Work Comp	Workers' Compensation.
		Zoning	Zoning and Planning.

DIGEST TOPICS

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MATERIAL

U.S.Fla. 1999. In general, false statement is "material" if it has natural tendency to influence, or is capable of influencing, the decision of decision-making body to which it was addressed.—*Neder v. U.S.*, 119 S.Ct. 1827, 527 U.S. 1, 144 L.Ed.2d 35, on remand 197 F.3d 1122, certiorari denied 120 S.Ct. 2717, 530 U.S. 1261, 147 L.Ed.2d 982.—*Fraud 18*.

U.S.La. 1995. Favorable evidence state failed to disclose to defendant was "material," as it would have made a different result "reasonably probable" in capital murder prosecution, and thus, nondisclosure of evidence was *Brady* violation; among undisclosed evidence was statement by prosecution's "best" witness that assailant was about five foot four or five foot five and medium build, matching description of key informer and not defendant, who was six feet tall and thin, statement by another eyewitness, who described struggle and shooting with clarity at trial, indicating that witness had not seen actual murder and had not seen assailant outside vehicle, and undisclosed statements by key informer that were inconsistent, implied that informer was anxious to see defendant arrested for victim's murder, and raised suspicions that informer planted both murder weapon and victim's purse in places where they were found. U.S.C.A. Const. Amends. 5, 14.—*Kyles v. Whitley*, 115 S.Ct. 1555, 514 U.S. 419, 131 L.Ed.2d 490, on remand 54 F.3d 243, appeal after remand *State v. Kyles*, 706 So.2d 611, 1997-2660 (La.App. 4 Cir. 1/21/98).—*Crim Law 700(3), 700(4)*.

U.S.N.J. 1988. The term "material" as used in a statute providing for the denaturalization of naturalized citizens applied to a concealment or misrepresentation which had a natural tendency to influence or was capable of influencing the decision of the decision-making body to which it was addressed. Immigration and Nationality Act, § 340(a), as amended, 8 U.S.C.A. § 1451(a).—*Kungys v. U.S.*, 108 S.Ct. 1537, 485 U.S. 759, 99 L.Ed.2d 839.—*Aliens 71(7)*.

U.S.Va. 1999. Evidence is "material" for purposes of *Brady* if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Strickler v. Greene*, 119 S.Ct. 1936, 527 U.S. 263, 144 L.Ed.2d 286.—*Crim Law 700(2.1)*.

U.S.Wash. 1995. Evidence is "material," such that failure to disclose it is *Brady* violation and justifies setting aside conviction, only if there exists reasonable probability that result at trial would have been different had evidence been disclosed.—*Wood v. Bartholomew*, 116 S.Ct. 7, 516 U.S. 1, 133 L.Ed.2d 1, rehearing denied 116 S.Ct. 583, 516 U.S. 1018, 133 L.Ed.2d 505, on remand 96 F.3d 1451.—*Crim Law 700(2.1)*.

U.S.Wash. 1995. State's failure to disclose that witness had failed polygraph test did not deprive defendant of "material" evidence under *Brady* rule, in light of inadmissibility of polygraph results under

Washington law even for impeachment purposes, pure speculation that knowledge of polygraph results might have affected trial defense counsel's preparation, and overwhelming other evidence of defendant's guilt; defendant claimed that his gun accidentally discharged twice so as to shoot victim in head while he lay on floor, defendant stated before robbery that he would leave no witnesses, and defense counsel acknowledged that polygraph results would not have affected his cross-examination of witness.—*Wood v. Bartholomew*, 116 S.Ct. 7, 516 U.S. 1, 133 L.Ed.2d 1, rehearing denied 116 S.Ct. 583, 516 U.S. 1018, 133 L.Ed.2d 505, on remand 96 F.3d 1451.—*Crim Law 700(3)*.

U.S.Wash. 1985. Evidence withheld by government is "material," as would require reversal of conviction, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*U.S. v. Bagley*, 105 S.Ct. 3375, 473 U.S. 667, 87 L.Ed.2d 481, on remand *Bagley v. Lumpkin*, 798 F.2d 1297.—*Crim Law 700(2.1), 1171.1(1)*.

U.S. Armed Forces 1999. Impeachment evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*U.S. v. Morris*, 52 M.J. 193.—*Mil Jus 933*.

AFCMR 1992. Exculpatory information must be highly probative of innocence of accused in order to be "material," such that failure to disclose information will require that accused's conviction be set aside.—*U.S. v. Branoff*, 34 M.J. 612, review gr in part 37 M.J. 61, set aside 38 M.J. 98, on remand 1993 WL 541222, review granted 40 M.J. 50, affirmed 40 M.J. 50.—*Mil Jus 1426*.

ACMR 1983. Facts will be "material" if there is substantial possibility that fact if made known would have altered determination of probable cause made by official authorizing search warrant.—*U.S. v. Kelly*, 15 M.J. 1024.—*Mil Jus 1072.1*.

ACMR 1980. Where accused unequivocally admitted that his perjured testimony concerning his military record was calculated to influence the sentence at his previous trial, such testimony was "material" for purposes of perjury prosecution even though accused was reluctant to admit that such testimony actually influenced sentence. UCMJ, art. 131, 10 U.S.C.A. § 931; MCM 1969, par. 210.—*U. S. v. Akin*, 9 M.J. 886.—*Mil Jus 550*.

NMCMR 1990. Right to compel attendance of witnesses is not absolute; defense must demonstrate that witnesses are both material and necessary before any order to produce is required; a witness is "material" when he either negates the Government's evidence or supports the defense. UCMJ, Art. 46, 10 U.S.C.A. § 846; U.S.C.A. Const. Amends. 5, 6.—*U.S. v. Allen*, 31 M.J. 572, review gr in part 32 M.J. 222, affirmed 33 M.J. 209, certiorari denied 112 S.Ct. 1473, 503 U.S. 936, 117 L.Ed.2d 617.—*Mil Jus 1124*.

C.A.D.C. 1998. A statement is “material,” under perjury statute, if it has a natural tendency to influence, or was capable of influencing, the decision of the tribunal in making a particular determination. 18 U.S.C.A. § 1623(a).—In re Sealed Case, 162 F.3d 670, 333 U.S.App.D.C. 245.—Perj 11(2).

C.A.D.C. 1998. Witness’s statement in affidavit that she had not had sexual relationship with president of the United States, which was made in connection with third party’s civil action against president, was “material” to civil action within meaning of perjury statute, as witness’s statements were predictably capable of affecting decision in civil action, since witness filed her affidavit for that very purpose. 18 U.S.C.A. § 1623(a).—In re Sealed Case, 162 F.3d 670, 333 U.S.App.D.C. 245.—Perj 11(3).

C.A.D.C. 1996. Under *Brady*, evidence is considered “material” and must be disclosed by government if there is reasonable probability that had evidence been disclosed to defense, result of proceedings would have been different.—U.S. v. Graham, 83 F.3d 1466, 317 U.S.App.D.C. 418, rehearing and suggestion for rehearing denied, certiorari denied *Terrell v. U.S.*, 117 S.Ct. 993, 519 U.S. 1132, 136 L.Ed.2d 874, appeal after remand 162 F.3d 1180, 333 U.S.App.D.C. 273, appeal after remand 203 F.3d 54, 340 U.S.App.D.C. 184.—Crim Law 700(2.1).

C.A.D.C. 1996. In determining whether evidence withheld by prosecution was “material,” *Brady* materiality inquiry is confined to determination of whether there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Cuffie, 80 F.3d 514, 317 U.S.App.D.C. 38.—Crim Law 700(2.1).

C.A.D.C. 1996. In *Brady* materiality inquiry, evidence is “material” if undisclosed evidence could have substantially affected efforts of defense counsel to impeach witness, thereby calling into question fairness of ultimate verdict.—U.S. v. Cuffie, 80 F.3d 514, 317 U.S.App.D.C. 38.—Crim Law 700(2.1).

C.A.D.C. 1996. Undisclosed evidence that prosecution witness, who testified that defendant paid him to keep drugs in his apartment, had lied under oath in previous court proceeding involving same drug conspiracy was “material” for *Brady* purposes, where witness was impeached on basis that he was cocaine addict and cooperating witness, but not based on prior perjury, and where witness’ testimony was essential part of prosecution’s case since it established only direct connection between defendant and drugs found in search of witness’ apartment.—U.S. v. Cuffie, 80 F.3d 514, 317 U.S.App.D.C. 38.—Crim Law 700(4).

C.A.D.C. 1993. Defendant’s false response on personal financial statement, completed in preparation for sentencing, that she had no interest in real estate, when in fact she and her spouse had purchased house, was “material,” for purposes of obstruction of justice enhancement under guidelines, though she did not have any equity in house,

presumably because of size of her loan, in that trial judge would certainly wish to consider defendant’s interest in house when assessing fine; “material” meant relevant, not outcome determinative. U.S.S.G. § 3C1.1, comment. (nn.3, 5), 18 U.S.C.A.App.—U.S. v. Smaw, 993 F.2d 902, 301 U.S.App.D.C. 240, appeal after remand 22 F.3d 330, 306 U.S.App.D.C. 21.—Sent & Pun 761.

C.A.D.C. 1989. Underwriters’ failure to inform subscribers that stock offered on all-or-nothing basis could be purchased by underwriters themselves was “material” and could serve as basis for charges that underwriters violated rules of fair practice governing their conduct, notwithstanding underwriters’ contention that number of shares they purchased was too small.—*Svalberg v. S.E.C.*, 876 F.2d 181, 277 U.S.App.D.C. 422.—Sec Reg 27.42.

C.A.D.C. 1984. Where a defendant has made a specific request for specific information that is not disclosed by prosecution, that information is considered “material” within meaning of mandate that upon request prosecution disclose any evidence favorable to an accused where evidence is material either to guilt or punishment if it might have affected outcome of trial.—U.S. v. Jenrette, 744 F.2d 817, 240 U.S.App.D.C. 193, certiorari denied 105 S.Ct. 2321, 471 U.S. 1099, 85 L.Ed.2d 840.—Crim Law 627.8(3).

C.A.D.C. 1984. Where defendant has made no request or a general request for exculpatory evidence, undisclosed evidence is “material” within meaning of mandate that upon request prosecution disclose any evidence favorable to an accused where that evidence is material either to guilt or to punishment only if, in context of entire record, it creates a reasonable doubt as to defendant’s guilt.—U.S. v. Jenrette, 744 F.2d 817, 240 U.S.App.D.C. 193, certiorari denied 105 S.Ct. 2321, 471 U.S. 1099, 85 L.Ed.2d 840.—Crim Law 627.8(3), 700(2.1).

C.A.D.C. 1984. Undisclosed evidence in prosecution on bribery charges stemming from undercover operation by FBI known as “Abscam”, including evidence allegedly indicating that defendant was targeted by FBI, undisclosed evidence concerning activities of one of Abscam operatives, Abscam operatives’ failure to record all telephone conversations with defendant, failure to disclose teletype report that defendant was in financial difficulty prior to Abscam, and certain evidence pertinent to credibility of one of Abscam operatives, would not have affected outcome of trial and thus was not “material” within meaning of mandate that upon request prosecution disclose any evidence favorable to accused where that evidence is material either to guilt or to punishment.—U.S. v. Jenrette, 744 F.2d 817, 240 U.S.App.D.C. 193, certiorari denied 105 S.Ct. 2321, 471 U.S. 1099, 85 L.Ed.2d 840.—Crim Law 627.6(1).

C.A.D.C. 1977. Under typical test permitting certain actions to be taken if there is a material misrepresentation, a misrepresentation is generally deemed “material” if it is shown that the correct facts would have had a bearing on the action of a

decisionmaker.—*Castaneda-Gonzalez v. Immigration and Naturalization Service*, 564 F.2d 417, 183 U.S.App.D.C. 396.—*Fraud* 18.

C.A.D.C. 1973. Undisclosed evidence is “material” within rule that finding of materiality of undisclosed evidence is required before new trial is necessitated when undisclosed evidence might have led the jury to entertain reasonable doubt about the defendant’s guilt. 18 U.S.C.A. § 3500.—*U.S. v. Lemonakis*, 485 F.2d 941, 158 U.S.App.D.C. 162, certiorari denied 94 S.Ct. 1586, 415 U.S. 989, 39 L.Ed.2d 885, certiorari denied *Enten v. U.S.*, 94 S.Ct. 1587, 415 U.S. 989, 39 L.Ed.2d 885.—*Crim Law* 1171.1(1).

C.A.D.C. 1956. As used in respect to evidence, “material” has wholly different meaning from “relevant”; and “relevant” means to relate to the issue, while “material” means to have probative weight that is reasonably likely to influence tribunal in making determination required to be made.—*Weinstock v. U.S.*, 231 F.2d 699, 97 U.S.App.D.C. 365.—*Evid* 92, 143.

App.D.C. 1943. In proceeding to review order of Securities and Exchange Commission requiring corporation and its two subsidiaries, which were nonoperating public utility holding companies, to end corporate existence of one of subsidiaries and to substitute a single common stock for present capitalization, motion for leave to introduce additional evidence of improved financial condition of the companies was denied where the improvements were relatively too small and too brief to be “material” within statute relating to introduction of additional evidence. *Public Utility Holding Company Act of 1935*, §§ 1(b), 24(a), 15 U.S.C.A. §§ 79k(b), 79x(a).—*Central & South West Utilities Co. v. Securities and Exchange Commission*, 136 F.2d 273, 78 U.S.App.D.C. 37.—*Pub Ut* 215.

App.D.C. 1940. False statements, in application for marriage license, concerning groom’s name and his former marriages were “material,” and hence groom making such statements was guilty of perjury. D.C.Code 1929, T. 6, § 131; T. 14, §§ 1, 6-9.—*Robinson v. U.S.*, 114 F.2d 475, 72 App.D.C. 254.—*Perj* 11(2).

App.D.C. 1940. The test in determining whether false statements in application for marriage license are “material,” so as to make person giving the statements guilty of perjury, is whether the statements have a natural tendency to influence the clerk of the District Court of the United States for the District of Columbia in his investigation of the facts, in the exercise of his official discretion, and in the administration of the law. D.C.Code 1929, T. 6, § 131; T. 14.—*Robinson v. U.S.*, 114 F.2d 475, 72 App.D.C. 254.—*Perj* 11(2).

C.A.1 1995. Statement is “material,” for purposes of Interstate Commerce Commission (ICC) regulation under which exemption from Interstate Commerce Act (ICA) is void ab initio if notice of exemption contains materially false or misleading information, if transaction would not have otherwise qualified for exemption. 49 C.F.R.

§ 1150.32(a-c).—*Berkshire Scenic Ry. Museum, Inc. v. I.C.C.*, 52 F.3d 378.—*Commerce* 85(1).

C.A.1 1994. In order to determine what facts are “material,” for purposes of regulation requiring that requests for evidentiary hearings in connection with issuance of National Pollution Discharge Elimination System (NPDES) permit set forth material issues of fact relevant to issuance of permit, court must look to controlling substantive law. 40 C.F.R. § 124.75(a)(1).—*Adams v. U.S. E.P.A.*, 38 F.3d 43.—*Environ Law* 220.

C.A.1 1987. For statement to be “material” for purpose of determining whether it will support revocation of license, it need only have natural tendency to influence, or be capable of influencing, decision of agency in making required determination.—*Twomey v. National Transp. Safety Bd.*, 821 F.2d 63.—*Aviation* 123.1.

C.A.5 2000. Statement or omitted fact is “material” for purposes of provision of Commodity and Exchange Act prohibiting fraudulent solicitation of customers if there is substantial likelihood that reasonable investor would consider information important in making decision to invest. *Commodity Exchange Act*, § 4b(a)(i, iii), as amended, 7 U.S.C.A. § 6b(a)(i, iii).—*R&W Technical Services Ltd. v. Commodity Futures Trading Com’n*, 205 F.3d 165, certiorari denied 121 S.Ct. 54, 531 U.S. 817, 148 L.Ed.2d 22.—*Com Fut* 17.

C.A.5 2000. Fact that sellers of computer software for making buy and sell recommendations for trading commodity futures contracts never tested system by making any trades in actual markets with real money, but instead based advertised performance data on real-time paper trades, was “material” omission in their advertising under Commodity and Exchange Act provision prohibiting fraudulent solicitation of customers. *Commodity Exchange Act*, § 4b(a)(i, iii), as amended, 7 U.S.C.A. § 6b(a)(i, iii).—*R&W Technical Services Ltd. v. Commodity Futures Trading Com’n*, 205 F.3d 165, certiorari denied 121 S.Ct. 54, 531 U.S. 817, 148 L.Ed.2d 22.—*Com Fut* 17.

C.A.5 1978. Report relating to political conditions in prospective deportee’s native country would be “material” to deportee’s claim of feared persecution, so as to warrant remand to the Immigration and Naturalization Service for consideration of the report, only if the report was probative with respect to the prospective deportee’s claim of probable persecution in the event of deportation. 28 U.S.C.A. § 2347(c); *Immigration and Nationality Act*, § 243(h), 8 U.S.C.A. § 1253(h).—*Fleurinor v. Immigration and Naturalization Service*, 585 F.2d 129.—*Aliens* 54.3(6).

C.A.5 1978. Where report concerning political conditions in Haiti did not add anything to Haitian citizen’s claim that he would be subject to persecution upon deportation to Haiti, report was not “material” within meaning of statute which authorizes the Court of Appeals to order an agency to consider additional “material” evidence. 28 U.S.C.A. § 2347(c).—*Fleurinor v. Immigration and*

Naturalization Service, 585 F.2d 129.—Aliens 54.3(6).

C.A.8 1995. For purpose of determining whether asylum applicant should be permitted to adduce additional evidence before Board of Immigration Appeals (BIA), requirement that additional evidence be “material” requires both relevance to matter at hand and probative value, and evidence should be more than merely repetitive or cumulative of evidence already in record. 28 U.S.C.A. § 2347(c).—Makonnen v. I.N.S., 44 F.3d 1378.—Admin Law 819; Aliens 54(3.1).

C.A.9 1995. Test of whether concealments or misrepresentations on visa application are “material” for purposes of disqualifying visa applicant is whether they have natural tendency to influence decisions of Immigration and Naturalization Service (INS).—Forbes v. I.N.S., 48 F.3d 439.—Aliens 53.4.

C.A.10 1999. Air agency certificate holder’s false statement that it had used certain type of nut in repairing propellers was “material,” as required for statement to constitute intentional falsification of maintenance records in violation of Federal Aviation Administration (FAA) regulation, inasmuch as false representation gave holder the capability of influencing FAA inspector’s determination that holder was using only authorized parts, and adversely affected FAA’s ability to trace the parts. 14 C.F.R. § 43.12(a)(1).—Thunderbird Propellers, Inc. v. F.A.A., 191 F.3d 1290.—Aviation 238.

C.A.10 1999. False statements are “material,” as required for statements to constitute intentional falsification of maintenance records in violation of a Federal Aviation Administration (FAA) regulation, when they have the natural tendency to influence, or are capable of influencing, a decision of the FAA inspector charged with determining a repair station’s compliance with FAA regulations. 14 C.F.R. § 43.12(a)(1).—Thunderbird Propellers, Inc. v. F.A.A., 191 F.3d 1290.—Aviation 238.

C.A.Fed. 2003. In the context of inequitable conduct, materiality is not limited to matters reflected in the claims of a patent; rather, information is “material” when there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue.—Hoffmann-La Roche, Inc. v. Promega Corp., 323 F.3d 1354.—Pat 97.

C.A.Fed. 2002. In order for a contractor to prevail on a claim of misrepresentation, the contractor must show that the government made an erroneous representation of a material fact that the contractor honestly and reasonably relied on to the contractor’s detriment, and a misrepresentation is “material” if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so. Restatement (Second) of Contracts § 162.—AT&T Communications, Inc. v. Perry, 296 F.3d 1307.—U S 74(4).

C.A.Fed. (Cal.) 1985. Information withheld from Patent and Trademark Office concerning sales more than one year before patent application was

filed which could bar patentability was “material.” 35 U.S.C.A. § 102(b).—Argus Chemical Corp. v. Fibre Glass-Evercoat Co., Inc., 759 F.2d 10, certiorari denied 106 S.Ct. 231, 474 U.S. 903, 88 L.Ed.2d 230, on remand 645 F.Supp. 15, affirmed 812 F.2d 1381.—Pat 97.

C.A.Fed. (Del.) 1995. Information withheld from Patent and Trademark Office (PTO) is “material” when there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as patent; if information allegedly withheld is not as pertinent as that considered by examiner, or is merely cumulative to that considered by examiner, such information is not material. 35 U.S.C.A. §§ 6, 131; 37 C.F.R. § 1.56.—Molins PLC v. Textron, Inc., 48 F.3d 1172, rehearing denied.—Pat 97.

C.A.Fed. (Ga.) 2001. In order to make a finding of inequitable conduct to support a claim for attorney fees in a patent case, a district court must determine that information known to the inventors or their representatives was both material and intentionally withheld; information is deemed “material” if there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent. 35 U.S.C.A. § 285.—Brasseler, U.S.A. I, L.P. v. Stryker Sales Corp., 267 F.3d 1370.—Pat 325.11(4).

C.A.Fed. (N.C.) 1986. For purposes of determining whether patent owner’s failure to disclose accurate information is inequitable conduct sufficient to render patent unenforceable, nondisclosed references are “material” if there is substantial likelihood that reasonable examiner would have considered them important in deciding whether to allow application for patent to issue.—Pacific Furniture Mfg. Co. v. Preview Furniture Corp., 800 F.2d 1111.—Pat 97.

C.A.Fed. (N.Y.) 1996. Information is “material,” for purpose of duty to disclose such information in patent prosecution, when there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as patent.—Refac Intern., Ltd. v. Lotus Development Corp., 81 F.3d 1576, rehearing denied, in banc suggestion declined.—Pat 98.

C.A.Fed. (N.Y.) 1996. Affidavit submitted in support of patent application regarding adequacy of specification’s disclosure omitted “material” information, including fact that affiant had worked for inventors’ company less than six months before executing affidavit and that affiant had worked with and reviewed documentation for commercial embodiment of invention, as such information would have been important to reasonable patent examiner. 35 U.S.C.A. § 112.—Refac Intern., Ltd. v. Lotus Development Corp., 81 F.3d 1576, rehearing denied, in banc suggestion declined.—Pat 98.

C.A.Fed. (Ohio) 1996. Undisclosed information is “material,” for purposes of inequitable conduct claim, when there is substantial likelihood that rea-

sonable patent examiner would have considered information important in deciding whether to allow application to issue as patent.—*Pro-Mold and Tool Co., Inc. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568.—Pat 97.

C.A.Fed. (Tex.) 1999. Information is “material,” such that it must be disclosed to Patent and Trademark Office (PTO) by patent applicant, when there is a substantial likelihood that a reasonable examiner would have considered the information important in deciding whether to allow the application to issue as a patent; however, an otherwise material reference need not be disclosed if it is merely cumulative of or less material than other references already disclosed.—*Elk Corp. of Dallas v. GAF Bldg. Materials Corp.*, 168 F.3d 28, rehearing denied, in banc suggestion declined, certiorari denied 120 S.Ct. 178, 528 U.S. 873, 145 L.Ed.2d 150.—Pat 97.

C.A.Fed. (Va.) 2000. Information withheld from patent examiner is deemed “material,” as would support finding of inequitable conduct, if there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as a patent.—*Li Second Family Ltd. Partnership v. Toshiba Corp.*, 231 F.3d 1373, rehearing and rehearing denied, certiorari denied 121 S.Ct. 2550, 533 U.S. 929, 150 L.Ed.2d 717.—Pat 97.

C.A.11 (Ala.) 2000. Under *Brady*, evidence allegedly suppressed by State is “material” if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; moreover, materiality inquiry should be applied to suppressed evidence considered collectively, not item-by-item.—*Bradley v. Nagle*, 212 F.3d 559, rehearing and rehearing denied 226 F.3d 650, certiorari denied 121 S.Ct. 886, 531 U.S. 1128, 148 L.Ed.2d 794.—Crim Law 700(2.1).

C.A.11 (Ala.) 1999. For purposes of claim that government withheld favorable evidence in violation of *Brady*, evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a “reasonable probability” is a probability sufficient to undermine confidence in the outcome.—*Wright v. Hopper*, 169 F.3d 695, rehearing denied 180 F.3d 276, certiorari denied 120 S.Ct. 336, 528 U.S. 934, 145 L.Ed.2d 262.—Crim Law 700(2.1).

C.A.11 (Ala.) 1999. Even if state had suppressed preliminary hearing testimony in which witness identified suspect other than defendant as person at crime scene, evidence was not “material,” as required for *Brady* violation, in that it did not indicate that defendant was not at crime scene and did not contradict or impeach testimony of witnesses who admitted their involvement in offense and testified that defendant was triggerman in murders.—*Wright v. Hopper*, 169 F.3d 695, rehearing denied 180 F.3d 276, certiorari denied 120 S.Ct. 336, 528 U.S. 934, 145 L.Ed.2d 262.—Crim Law 700(3).

C.A.11 (Ala.) 1999. Evidence pertaining to witness’ mental health and drug use was not “material,” and therefore petitioner could not establish prejudice required to overcome procedural default of *Brady* claim based on state’s failure to disclose such evidence, as required for habeas review; evidence was inadmissible under state law, given absence of showing that witness was using drugs or suffered from mental incapacity when she testified at trial or when defendant told her that he performed killings at issue, and, even if evidence had been admissible, it would have had little bearing on witness’ credibility, which defense counsel was already able to call into question.—*Wright v. Hopper*, 169 F.3d 695, rehearing denied 180 F.3d 276, certiorari denied 120 S.Ct. 336, 528 U.S. 934, 145 L.Ed.2d 262.—Hab Corp 409.

C.A.11 (Ala.) 1996. For summary judgment purposes, issue of fact is “genuine” if record as a whole could lead reasonable trier of fact to find for nonmoving party, and issue is “material” if it might affect outcome of case under governing law. Fed. Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Redwing Carriers, Inc. v. Saraland Apartments*, 94 F.3d 1489, 140 A.L.R. Fed. 691.—Fed Civ Proc 2470.1.

C.A.11 (Ala.) 1996. For purposes of determining whether investigator has satisfied his or her constitutional duty to turn over to prosecutor material exculpatory and impeachment evidence, evidence is “material” if its suppression undermines confidence in outcome of trial. U.S.C.A. Const. Amend. 14.—*McMillian v. Johnson*, 88 F.3d 1554, opinion amended on rehearing 101 F.3d 1363, rehearing and suggestion for rehearing denied 109 F.3d 773, certiorari denied 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016, certiorari denied *Tate v. McMillian*, 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016, certiorari denied 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016, certiorari denied 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016.—Crim Law 700(2.1), 700(4).

C.A.11 (Ala.) 1996. Exculpatory and impeachment evidence is “material” and therefore must be disclosed if there is reasonable probability that, if evidence is suppressed, result of proceeding will be different; reasonable probability of different result is shown when suppression of evidence would undermine confidence in outcome of trial. U.S.C.A. Const. Amend. 14.—*McMillian v. Johnson*, 88 F.3d 1554, opinion amended on rehearing 101 F.3d 1363, rehearing and suggestion for rehearing denied 109 F.3d 773, certiorari denied 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016, certiorari denied *Tate v. McMillian*, 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016, certiorari denied 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016, certiorari denied 117 S.Ct. 2514, 521 U.S. 1121, 138 L.Ed.2d 1016.—Crim Law 700(2.1), 700(4).

C.A.11 (Ala.) 1993. Evidence is “material,” as needed to establish *Brady* claim based on state’s withholding of exculpatory information which may have changed outcome of trial, when reasonable probability exists that outcome of proceedings would have been different had evidence been dis-

closed to defense.—*Nelson v. Nagle*, 995 F.2d 1549, rehearing denied 7 F.3d 242.—Crim Law 700(2.1).

C.A.9 (Alaska) 1994. Mortgage broker's misrepresentations to ERISA trust fund in connection with purchase of deed of trust notes were "cause" of fund's loss, thereby rendering advisor liable as fiduciary; advisor's misrepresentations that debtor on note owned boat and airplane, that he made \$20,000 down payment on property, and that he was married and his wife was employed, were "material," given significance of those statements in enabling trust to evaluate likelihood of repayment. Employee Retirement Income Security Act of 1974, § 3(21)(A)(ii), 29 U.S.C.A. § 1002(21)(A)(ii).—*Thomas, Head & Greisen Employees Trust v. Buster*, 24 F.3d 1114, certiorari denied 115 S.Ct. 935, 513 U.S. 1127, 130 L.Ed.2d 881.—Pensions 49.

C.A.9 (Ariz.) 1998. Evidence is considered "material," for purposes of *Brady* rule requiring prosecution's disclosure of it to an accused, only if there is reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different.—*Ortiz v. Stewart*, 149 F.3d 923, certiorari denied 119 S.Ct. 1777, 526 U.S. 1123, 143 L.Ed.2d 806.—Crim Law 700(2.1).

C.A.9 (Ariz.) 1993. Defendant's false statements to bank promising to repay loan and representing that he did not have funds available to keep payments current were "material," as required to support his convictions for bank fraud and false and fraudulent representations to bank in connection with loan, regardless of whether bank actually relied on statements, as statements had capacity to influence bank, which was all that was required. 18 U.S.C.A. §§ 1014, 1344; A.R.S. § 33-814.—*U.S. v. Hutchison*, 22 F.3d 846, as amended, and amended on denial of rehearing.—Banks 509.10, 509.20.

C.A.8 (Ark.) 1983. Where defense makes only general request for exculpatory information in prosecution's possession, omitted evidence is "material," and failure to disclose violates due process, only if it creates reasonable doubt as to defendant's guilt. U.S.C.A. Const.Amends. 5, 14.—*U.S. v. Key*, 717 F.2d 1206.—Const Law 268(5).

C.A.9 (Cal.) 2003. In the context of securities rule prohibiting solicitation of proxy by means of proxy statement which omits to state material fact necessary to make statements therein not false or misleading, an omitted fact is "material" if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), as amended, 15 U.S.C.A. § 78n(a); 17 C.F.R. § 240.14a-9.—*Seinfeld v. Bartz*, 322 F.3d 693.—Sec Reg 49.22(2).

C.A.9 (Cal.) 2002. Evidence is "material," for purpose of prosecution's duty to disclose favorable, material evidence to the defendant, when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a reasonable probability is a probability sufficient to undermine confidence in the outcome.—*Williams v. Woodford*, 306 F.3d 665.—Crim Law 700(2.1).

C.A.9 (Cal.) 2001. Surveillance videotapes, physical descriptions, and artists' sketches that purportedly would have established that someone other than defendant had passed counterfeit currency were not "material" within meaning of rule requiring government to permit defendant to inspect material documents or objects, inasmuch as videotapes, descriptions, and sketches related to passing counterfeit notes in other districts, and evidence of such activity would be relevant only at sentencing. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—*U.S. v. Nikrasch*, 25 Fed.Appx. 570.—Crim Law 627.6(2), 627.6(3).

C.A.9 (Cal.) 2001. Evidence is "material," within the meaning of the rule requiring the government to permit a defendant to inspect and copy or photograph material documents or objects, if it is relevant to the development of a possible defense, or if it will enable the accused to substantially alter the quantum of proof in his favor. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—*U.S. v. Nikrasch*, 25 Fed.Appx. 570.—Crim Law 627.6(2).

C.A.9 (Cal.) 2001. To be "material" in terms of a *Brady* analysis, there must be a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a reasonable probability is one sufficient to undermine confidence in the outcome.—*Stewart v. Ayers*, 8 Fed.Appx. 623, certiorari denied 122 S.Ct. 357, 534 U.S. 956, 151 L.Ed.2d 270.—Crim Law 700(2.1).

C.A.9 (Cal.) 2001. Untrue testimony is "material," supporting an enhancement for obstruction of justice where, if believed, it would tend to influence or affect the issue under determination. U.S.S.G. §§ 3C1.1, 3C1.1, comment. (n. 6), 18 U.S.C.A.—*U.S. v. Smith*, 7 Fed.Appx. 772.—Sent & Pun 761.

C.A.9 (Cal.) 2001. Under Social Security Act, remand is warranted only if there is new evidence that is material and good cause for the late submission of the evidence; new evidence is "material" if it bears directly and substantially on the matter in dispute, and if there is a reasonable possibility that the new evidence would have changed the outcome of the determination. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).—*Bruton v. Massanari*, 268 F.3d 824, as amended.—Social S 8.20.

C.A.9 (Cal.) 1999. Government report indicating that investigation of print shop identified by witness as source of falsified certificates revealed no evidence that shop had ever printed certificates for defendant or witness was not "material," for purposes of defendant's claim that government failed to disclose report in violation of *Brady*, given that defense was able to impeach witness extensively and there was ample evidence of guilt independent of witness' testimony.—*U.S. v. Cooper*, 173 F.3d 1192, certiorari denied 120 S.Ct. 526, 528 U.S. 1019, 145 L.Ed.2d 408.—Crim Law 700(4).

C.A.9 (Cal.) 1999. Evidence is "material" for purposes of *Brady* claim that government failed to meet its disclosure obligations only if there is a reasonable probability that the result of the proceeding would have been different had the evidence

been disclosed to the defense; question is not whether defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.—U.S. v. Cooper, 173 F.3d 1192, certiorari denied 120 S.Ct. 526, 528 U.S. 1019, 145 L.Ed.2d 408.—Crim Law 700(2.1).

C.A.9 (Cal.) 1999. Exculpatory evidence is “material,” and required to be disclosed to defendant by prosecutor under United States Supreme Court’s *Brady* decision, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—U.S. v. Mikaelian, 168 F.3d 380, opinion amended 180 F.3d 1091, appeal after remand 30 Fed.Appx. 692.—Crim Law 700(2.1).

C.A.9 (Cal.) 1998. In order to be “material,” for purpose of finding securities fraud under section 10(b) and Rule 10b–5, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—U.S. v. Smith, 155 F.3d 1051, certiorari denied 119 S.Ct. 804, 525 U.S. 1071, 142 L.Ed.2d 664.—Sec Reg 60.28(11).

C.A.9 (Cal.) 1998. Under federal common law in applying ERISA, misrepresentation is “material” if it affects insurability or the amount of premium; in essence, “materiality” is determined by the misrepresentation’s effect on the insurer’s informed acceptance of risk, i.e., would knowledge of the true facts have influenced the insurer in deciding whether to accept the risk or in assessing amount of premium. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.; Restatement (Second) of Contracts § 164.—Security Life Ins. Co. of America v. Meyling, 146 F.3d 1184, amended on denial of rehearing.—Insurance 3003(4).

C.A.9 (Cal.) 1998. Evidence is “material,” within meaning of *Brady* rule requiring disclosure, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—Singh v. Prunty, 142 F.3d 1157, certiorari denied 119 S.Ct. 388, 525 U.S. 956, 142 L.Ed.2d 321, appeal after new trial People v. Singh, 2003 WL 1796175, nonpublished/noncitable, and review filed.—Crim Law 700(2.1).

C.A.9 (Cal.) 1995. Evidence that government suppresses from defendant is “material,” and therefore in violation of *Brady* rule, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” of different result is shown when government’s suppression undermines confidence in outcome of trial. U.S.C.A. Const.Amend. 5.—U.S. v. Sarno, 73 F.3d 1470, certiorari denied Knapp v. U.S., 116 S.Ct. 2554, 518 U.S. 1020, 135 L.Ed.2d 1072, certiorari denied 116 S.Ct. 2555, 518 U.S. 1020, 135 L.Ed.2d 1073, certio-

rari denied Nash v. U.S., 117 S.Ct. 161, 519 U.S. 859, 136 L.Ed.2d 105.—Crim Law 700(2.1).

C.A.9 (Cal.) 1995. “Material” fact is one which might affect outcome of case under governing law; to preclude summary judgment, dispute about material fact must also be “genuine,” such that reasonable jury could find in favor of non-moving party.—Anheuser-Busch, Inc. v. Natural Beverage Distributors, 69 F.3d 337.—Fed Civ Proc 2470.1.

C.A.9 (Cal.) 1995. Evidence is “material,” for *Brady* purposes, only if there is reasonable probability that, had it been disclosed to defense, result of proceeding would have been different.—U.S. v. Manning, 56 F.3d 1188, appeal after remand 145 F.3d 1342.—Crim Law 700(2.1).

C.A.9 (Cal.) 1994. Plaintiff alleging damages arising from false and misleading registration statement must demonstrate that (1) registration statement contained an omission or misrepresentation, and (2) omission or misrepresentation was “material,” that is, would have misled a reasonable investor about nature of his or her investment. Securities Act of 1933, § 11, 15 U.S.C.A. § 77k.—Kaplan v. Rose, 49 F.3d 1363, rehearing denied, certiorari denied Payne v. Kaplan, 116 S.Ct. 58, 516 U.S. 810, 133 L.Ed.2d 21.—Sec Reg 25.18, 25.21(3).

C.A.9 (Cal.) 1994. Standard for determining whether suppressed evidence is “material,” for purpose of determining whether Court of Appeals has jurisdiction over government’s appeal of suppression order, is not whether evidence has potential for increasing defendant’s term of incarceration, but, rather, whether evidence would be persuasive to reasonable trier of fact in establishing proposition for which government seeks to admit it. 18 U.S.C.A. § 3731.—U.S. v. Poulsen, 41 F.3d 1330.—Crim Law 1024(1).

C.A.9 (Cal.) 1994. Developer’s principal’s history of diverting money to other companies he owned was not “material” fact that underwriter should have disclosed in its official statement concerning industrial development bonds, for purposes of bondholder’s securities fraud claim against underwriter arising from failure of construction project due to principal’s diversion of money earmarked for that project to his other companies; bondholder failed to allege that prior transfers were illegal. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Shawmut Bank, N.A. v. Kress Associates, 33 F.3d 1477.—Sec Reg 60.28(13).

C.A.9 (Cal.) 1994. Misstatements made by debtor regarding number of prior bankruptcies he had filed, in form required under local rule to disclose existence of prior bankruptcy proceedings and dispositions, was “material,” as required for bankruptcy fraud conviction; failure to disclose prior bankruptcies hindered bankruptcy court’s ability to make adequate determination of debtor’s purpose as well as debtor’s status. 18 U.S.C.A. § 152; U.S.Bankr. Ct.Rules C.D.Cal., Rule 104; Bankr.Code, 11 U.S.C.A. §§ 109(g), 727(a)(8).—U.S. v. Lindholm, 24 F.3d 1078, denial of post-conviction relief affirmed 61 F.3d 913.—Bankr 3861.

C.A.9 (Cal.) 1992. False statements used in procurement of citizenship are "material," and therefore warrant denaturalization, when they are coupled with evidence giving rise to fair inference of ineligibility. Immigration and Nationality Act, § 340(a), 8 U.S.C.A. § 1451(a).—U.S. v. Puerta, 982 F.2d 1297.—Aliens 71(7).

C.A.9 (Cal.) 1989. Evidence is "material" under *Brady* only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—U.S. v. Kennedy, 890 F.2d 1056, certiorari denied 110 S.Ct. 1308, 494 U.S. 1008, 108 L.Ed.2d 484.—Crim Law 700(2.1).

C.A.9 (Cal.) 1989. Any failure to report income is "material," within meaning of statute imposing penalty for willfully making and subscribing tax return, statement, or other document, which person does not believe to be true and correct as to every "material" matter. 26 U.S.C.A. § 7206(1).—U.S. v. Holland, 880 F.2d 1091.—Int Rev 5263.30.

C.A.9 (Cal.) 1988. To be "material," for purposes of statute proscribing falsification or concealment of material fact or making of false or fraudulent statements or representations in matter within jurisdiction of federal agency, statement need only have propensity or capacity to influence or affect agency's decision; the agency need not rely on the information in fact for it to be material. 18 U.S.C.A. § 1001.—U.S. v. Rodriguez-Rodriguez, 840 F.2d 697.—Fraud 68.10(4).

C.A.9 (Cal.) 1985. In regard to a securities fraud claim, a fact is "material" if its existence or nonexistence is a matter to which a reasonable person would attach importance in determining his choice of action in the transaction.—Toombs v. Leone, 777 F.2d 465.—Sec Reg 60.28(11).

C.A.9 (Cal.) 1985. Not everything which might affect price or value is "material" within meaning of securities antifraud rule 10b-5. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Grigsby v. CMI Corp., 765 F.2d 1369.—Sec Reg 60.28(11).

C.A.9 (Cal.) 1984. For purposes of statute providing that whoever, in any matter within jurisdiction of any department of the United States, knowingly conceals a material fact or makes any false or fraudulent statements shall be fined not more than \$10,000 or imprisoned not more than five years, or both, defendant's false statement to Customs Service agents as to the amount of money he was carrying out of the country was "material," despite fact that agents knew of the falsity of the statement. 18 U.S.C.A. § 1001.—U.S. v. Salinas-Ceron, 731 F.2d 1375, vacated 755 F.2d 726.—Fraud 68.10(4).

C.A.9 (Cal.) 1982. Defendant's statement "I know I have to report anything over \$5,000, but I have only \$5,000" was "material" within meaning of statute proscribing false statements with respect to matter within jurisdiction of department or agency of the United States and could constitute basis of conviction under that statute for making false state-

ment to customs agents concerning amount of currency defendant was carrying when he was leaving country. 18 U.S.C.A. § 1001.—U.S. v. Duncan, 693 F.2d 971, certiorari denied 103 S.Ct. 2436, 461 U.S. 961, 77 L.Ed.2d 1321.—Cust Dut 123.

C.A.9 (Cal.) 1981. Whether a fact is "material" for purposes of Securities and Exchange Commission Rule 10b-5 does not turn upon the availability of a state injunction. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—U.S. v. Margala, 662 F.2d 622.—Sec Reg 60.28(11).

C.A.9 (Cal.) 1979. The Court of Appeals rejected theory that a statement or act is "material" for purpose of the statute which makes it an offense to knowingly falsify or conceal a "material" fact in any matter within the jurisdiction of any United States department or agency only if the statement or act violates another statute. 18 U.S.C.A. § 1001.—U.S. v. Masters, 612 F.2d 1117, certiorari denied 101 S.Ct. 134, 449 U.S. 847, 66 L.Ed.2d 57.—Fraud 68.10(1).

C.A.9 (Cal.) 1977. The term "material" as related to law of rescission of a contract because of mutual mistake does not mean the same as "basic" or "essential," as used in the law of rescission of contract on the basis of innocent misrepresentation; there is a greater requirement of materiality when rescission is asked on the ground of mistake than when the theory is fraud or innocent misrepresentation.—Reliance Finance Corp. v. Miller, 557 F.2d 674.—Contracts 93(1).

C.A.9 (Cal.) 1975. Test of whether misrepresentation is "material," within meaning of Securities and Exchange Commission rule making it unlawful in connection with sale or purchase of securities to make any untrue statement of a material fact or to omit to state a material fact, is whether a reasonable man would attach importance to the fact misrepresented in determining his choice of action in the transaction. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Robinson v. Cupples Container Co., 513 F.2d 1274.—Sec Reg 60.46.

C.A.9 (Cal.) 1968. Evidence which goes only to credibility of witness may be "material" within rule that suppression of evidence favorable to accused violates due process. U.S.C.A. Const. Amend. 14.—Loraine v. U.S., 396 F.2d 335, certiorari denied 89 S.Ct. 292, 393 U.S. 933, 21 L.Ed.2d 270.—Const Law 268(5).

C.A.10 (Colo.) 1998. Issue of fact is "material" for purposes of summary judgment if under the substantive law it is essential to the proper disposition of the claim. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Adler v. Wal-Mart Stores, Inc., 144 F.3d 664.—Fed Civ Proc 2470.1.

C.A.10 (Colo.) 1997. *Brady* mandates reversal when failure to disclose evidence is coupled with finding that evidence is "material" meaning that there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Scarborough, 128 F.3d 1373, 158 A.L.R. Fed. 725, post-conviction relief denied 172 F.3d 880.—Crim Law 1166(10.10).

C.A.2 (Conn.) 2001. In an ERISA action alleging misrepresentation of future pension benefits, information is “material” if there is a substantial likelihood that the misrepresentation would mislead a reasonable employee in making an adequately informed decision about if and when to retire. Employee Retirement Income Security Act of 1974, § 2 et seq., as amended, 29 U.S.C.A. § 1001 et seq.—*Caputo v. Pfizer, Inc.*, 267 F.3d 181.—*Pensions* 47.

C.A.2 (Conn.) 1999. Newly discovered evidence does not warrant a new trial unless the defendant shows that: (1) the newly discovered evidence could not with due diligence have been discovered before or during trial; (2) where the claim is that the evidence shows perjury by a prosecution witness, the evidence demonstrates that the witness in fact committed perjury; (3) the evidence is “material” to the jury’s verdict, that is, relevant to the merits of the case; (4) the evidence is not cumulative of other evidence introduced at trial as to a fact; and (5) the evidence could have affected the jury’s verdict if it had been introduced at trial. Fed.Rules Cr.Proc. Rule 33, 18 U.S.C.A.—*U.S. v. Diaz*, 176 F.3d 52, certiorari denied *Rivera v. U.S.*, 120 S.Ct. 181, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Millet v. U.S.*, 120 S.Ct. 314, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Morales v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Cruz v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Vidro v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Roman v. U.S.*, 120 S.Ct. 386, 528 U.S. 957, 145 L.Ed.2d 301—*Crim Law* 938(1).

C.A.2 (Conn.) 1999. Suppressed evidence is “material” generally for purposes of *Brady* if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a “reasonable probability” of a different result is shown when the government’s evidentiary suppression undermines confidence in the outcome of the trial.—*U.S. v. Diaz*, 176 F.3d 52, certiorari denied *Rivera v. U.S.*, 120 S.Ct. 181, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Millet v. U.S.*, 120 S.Ct. 314, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Morales v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Cruz v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Roman v. U.S.*, 120 S.Ct. 386, 528 U.S. 957, 145 L.Ed.2d 301—*Crim Law* 700(2.1).

C.A.2 (Conn.) 1999. Suppressed impeachment evidence is “material” for purposes of *Brady* if the witness whose testimony is attacked supplied the only evidence linking the defendants to the crime, or where the likely impact on the witness’s credibility would have undermined a critical element of the prosecution’s case, but suppressed impeachment evidence is not material where the new evidence merely constitutes an additional basis on which to impeach a witness whose credibility has already been shown to be questionable.—*U.S. v. Diaz*, 176 F.3d 52, certiorari denied *Rivera v. U.S.*, 120 S.Ct.

181, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Millet v. U.S.*, 120 S.Ct. 314, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Morales v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Cruz v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Vidro v. U.S.*, 120 S.Ct. 315, 528 U.S. 875, 145 L.Ed.2d 153, certiorari denied *Roman v. U.S.*, 120 S.Ct. 386, 528 U.S. 957, 145 L.Ed.2d 301—*Crim Law* 700(4).

C.A.2 (Conn.) 1997. Information is “material,” for purposes of statute barring manipulative acts in conjunction with tender offer, if there is substantial likelihood that reasonable investor would consider it important in deciding how to invest. Securities Exchange Act of 1934, § 14(e), 15 U.S.C.A. § 78n(e).—*S.E.C. v. Mayhew*, 121 F.3d 44.—*Sec Reg* 52.39(3).

C.A.2 (Conn.) 1997. To be “material,” for purposes of statute barring manipulative acts in conjunction with tender offer, information need not be such that reasonable investor would necessarily change his investment decision based on information, as long as reasonable investor would have viewed it as significantly altering “total mix” of information available. Securities Exchange Act of 1934, § 14(e), 15 U.S.C.A. § 78n(e).—*S.E.C. v. Mayhew*, 121 F.3d 44.—*Sec Reg* 52.39(3).

C.A.3 (Del.) 1994. Perjurious statement is “material,” for purposes of false declaration statute, if it has tendency to influence, impede or hamper grand jury from pursuing investigation. 18 U.S.C.A. § 1623.—*U.S. v. Reilly*, 33 F.3d 1396.—*Perj* 11(2).

C.A.11 (Fla.) 2001. To succeed on her claim that a remand of a social security disability case to the administrative law judge (ALJ) is appropriate, claimant must show that: (1) there is new, noncumulative evidence; (2) the evidence is “material,” that is, relevant and probative so there is a reasonable possibility that it would change the administrative result; and (3) there is good cause for the failure to submit the evidence at the administrative level. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).—*Vega v. Commissioner of Social Sec.*, 265 F.3d 1214.—*Social S* 149.

C.A.11 (Fla.) 1999. Regardless of request, favorable, exculpatory or impeachment evidence is “material”, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a reasonable probability of a different result is shown when the government’s evidentiary suppression undermines confidence in the outcome of the trial.—*U.S. v. Scheer*, 168 F.3d 445.—*Crim Law* 700(2.1), 700(4).

C.A.11 (Fla.) 1999. For summary judgment purposes, an issue of fact is “material” if it might affect the outcome of the suit under the governing law.—*Western Group Nurseries, Inc. v. Ergas*, 167 F.3d 1354, on remand 211 F.Supp.2d 1362.—*Fed Civ Proc* 2470.1.

C.A.11 (Fla.) 1998. For *Brady* purposes, evidence is “material” only if there is a reasonable

probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Sims v. Singletary*, 155 F.3d 1297, rehearing and suggestion for rehearing denied 163 F.3d 1362, certiorari denied 119 S.Ct. 2373, 527 U.S. 1025, 144 L.Ed.2d 777.—Crim Law 700(2.1).

C.A.11 (Fla.) 1998. Statement is “material,” as required for conviction of making false statement to government, if it has natural tendency to influence or capability to influence government action; government is not actually required to rely upon alleged false statements to make them material. 18 U.S.C.A. § 1001.—*U.S. v. Johnson*, 139 F.3d 1359, rehearing denied, rehearing and suggestion for rehearing denied 149 F.3d 1197, certiorari denied 119 S.Ct. 2365, 527 U.S. 1021, 144 L.Ed.2d 770.—Fraud 68.10(4).

C.A.11 (Fla.) 1998. False end-use statements used by defendant to procure export licenses, stating that zirconium would be used in industrial explosives, when it was in fact made into cluster bombs sold to Iraq, were “material,” as required for conviction of false-statement; statements had natural tendency to influence Commerce Department in deciding whether to grant the licenses, despite defendant’s claim that United States had covert interest in zirconium being used to manufacture cluster bombs for Iraq. 18 U.S.C.A. § 1001.—*U.S. v. Johnson*, 139 F.3d 1359, rehearing denied, rehearing and suggestion for rehearing denied 149 F.3d 1197, certiorari denied 119 S.Ct. 2365, 527 U.S. 1021, 144 L.Ed.2d 770.—Fraud 68.10(4).

C.A.11 (Fla.) 1996. Drug defendant’s false statements to magistrate judge about whether he had any bank accounts or safe deposit boxes, made during pretrial hearing concerning his request for court-appointed attorney, were “material” for purposes of sentence enhancement for obstruction of justice under Sentencing Guidelines, where they led to appointment of counsel. U.S.S.G. § 3C1.1, 18 U.S.C.A.—*U.S. v. Ruff*, 79 F.3d 123, certiorari denied 117 S.Ct. 191, 519 U.S. 873, 136 L.Ed.2d 129.—Sent & Pun 761.

C.A.11 (Fla.) 1995. Where there has been suppression of favorable evidence in violation of *Brady*, nondisclosed evidence is “material” if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different, and “reasonable probability” is probability sufficient to undermine confidence in outcome.—*U.S. v. Alzate*, 47 F.3d 1103.—Crim Law 700(2.1).

C.A.11 (Fla.) 1993. In bank fraud prosecution arising from defendant’s obtaining false appraisal setting value of boat at \$350,000, evidence supported finding that appraisal was “material”; defendant knew that purchaser (an undercover agent) proposed to use appraisal to obtain bank loan of 80% of appraised value, defendant told inspector that he needed appraisal of \$350,000, and purchaser talked with bank concerning loan based on appraised value.—*U.S. v. Menichino*, 989 F.2d 438.—Banks 509.25.

C.A.11 (Fla.) 1992. An issue of fact is “material,” for purposes of motion for summary judgment, if it is a legal element of the claim, as identified by substantive law governing the case, such that its presence or absence might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Tip-ton v. Bergrohr GmbH-Siegen*, 965 F.2d 994, rehearing denied 974 F.2d 173, certiorari denied 113 S.Ct. 1259, 507 U.S. 911, 122 L.Ed.2d 657.—Fed Civ Proc 2470.1.

C.A.11 (Fla.) 1986. To establish *Brady* violation requiring reversal of a conviction, defendant must show that prosecution has suppressed evidence, that such evidence was favorable to defendant or was exculpatory, and that evidence was material; evidence is “material” if there is reasonable probability that, but for failure to produce such evidence, outcome of case would have been different.—*U.S. v. Barragan*, 793 F.2d 1255.—Crim Law 700(2.1).

C.A.11 (Fla.) 1984. For purposes of offense of making false, material declaration before federal grand jury, statement is “material” if it is capable of influencing grand jury’s investigation; to extent that truthful answers might assist grand jury’s investigation, false statements are “material” notwithstanding abundance of evidence facilitating access to truth. 18 U.S.C.A. § 1623.—*U.S. v. Corbin*, 734 F.2d 643.—Perj 11(7).

C.A.11 (Fla.) 1984. To be “material,” within meaning of criminal statute prohibiting the making of false statements to a United States department or agency, a falsification must have a natural tendency to influence or be capable of affecting or influencing a government function. 18 U.S.C.A. § 1001.—*U.S. v. Lopez*, 728 F.2d 1359, rehearing denied 733 F.2d 908, certiorari denied 105 S.Ct. 112, 469 U.S. 828, 83 L.Ed.2d 56.—Fraud 68.10(4).

C.A.11 (Fla.) 1983. Where prosecution has either actual or constructive knowledge that its case is based on false evidence or perjury, suppressed evidence is “material” within meaning of *Brady* rule if there is any reasonable likelihood that false evidence could have affected judgment of jury.—*U.S. v. Blasco*, 702 F.2d 1315, certiorari denied Galvan v. U.S., 104 S.Ct. 275, 464 U.S. 914, 78 L.Ed.2d 256, certiorari denied *Jamardo v. U.S.*, 104 S.Ct. 276, 464 U.S. 914, 78 L.Ed.2d 256.—Crim Law 627.6(1).

C.A.5 (Fla.) 1980. Defendant’s false statements with respect to ownership of vehicles, which were made at suppression hearing inquiring into validity of search of vehicles, were “material” to inquiry at hearing for purposes of subsequent perjury prosecution. 18 U.S.C.A. § 1621.—*U.S. v. Forrest*, 623 F.2d 1107, certiorari denied 101 S.Ct. 327, 449 U.S. 924, 66 L.Ed.2d 153.—Perj 11(2).

C.A.5 (Fla.) 1979. Corporate directors and officers are under a “duty to disclose” their interest in other parties that engage in transactions with the corporation; existence of such interest in a party to a securities transaction with the corporation is “material” information to the corporation’s shareholders and directors and, thus, failure to disclose such information is “deceptive” within meaning of securities fraud rules 10b–5. Securities Exchange Act

of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Alabama Farm Bureau Mut. Cas. Co., Inc. v. American Fidelity Life Ins. Co., 606 F.2d 602, rehearing denied 610 F.2d 818, certiorari denied 101 S.Ct. 77, 449 U.S. 820, 66 L.Ed.2d 22.—Sec Reg 60.28(13).

C.A.5 (Fla.) 1979. A fact is “material” if, but for the alleged nondisclosure or misrepresentation, the complaining party would not have entered into the transaction; furthermore, the issue of materiality of alleged nondisclosure or misrepresentation is a question of fact under Florida law.—Hauben v. Harmon, 605 F.2d 920.—Fraud 18, 64(4).

C.A.5 (Fla.) 1979. Where, though Department of Interior regulations required defendant, as applicant for license to import residual fuel oil, to demonstrate that it had a throughput agreement with a deep water terminal operator, the throughput agreement had no significance with respect to defendant’s actual importation of oil under the license in that no regulation required a licensee to use the terminal with which it claimed a throughput agreement and where defendant’s license stated that the residual fuel was for entry “at any port of entry” and the license nowhere referred to the throughput agreement which defendant had claimed in its application, defendant violated no regulations or license term by importing oil into a terminal other than the terminal with which it had represented that it had a throughput agreement and, therefore, any misstatements as to the quality of the throughput agreement, made in the license application, were not “material” and did not violate the section which makes it an offense to import merchandise by means of any false statement. 18 U.S.C.A. § 542.—U.S. v. Ven-Fuel, Inc., 602 F.2d 747, certiorari denied Ven Fuel, Inc. v. Duncan., 100 S.Ct. 2987, 447 U.S. 905, 64 L.Ed.2d 854.—Fraud 68.10(4).

C.A.5 (Fla.) 1978. Where outcome of trial could not have been affected by defendant’s prior access to a memorandum report prepared by law enforcement agents, the report was not “material” for purposes of the *Brady* disclosure rules.—U.S. v. Sink, 586 F.2d 1041, certiorari denied 99 S.Ct. 3102, 443 U.S. 912, 61 L.Ed.2d 876, certiorari denied Grim v. U.S., 99 S.Ct. 3102, 443 U.S. 912, 61 L.Ed.2d 876.—Crim Law 700(3).

C.A.5 (Fla.) 1978. Where one of issues on which grand jury investigation of the home health care industry focused was whether defendant owners of home health care organization had falsified vacation records of their organization, defendant’s statements concerning organization’s minutes which recorded a purported authorization of four weeks’ vacation for defendants was “material” for purposes of perjury statute. 18 U.S.C.A. § 1623(a).—U.S. v. Dudley, 581 F.2d 1193.—Perj 11(7).

C.A.5 (Fla.) 1978. Where offense being investigated by grand jury was removing original price stickers from automobiles and later selling them after substituting different price stickers and where alteration of odometers, even if it was neither a criminal act nor a civil offense at the time, was essential to the success of the suspected offense,

statements made by grand jury witness concerning the alteration of odometers were “material” to the grand jury’s investigation and provided a basis for subsequent prosecution of the witness for false swearing. 18 U.S.C.A. § 1623; Automobile Information Disclosure Act, § 4, 15 U.S.C.A. § 1233; Motor Vehicle Information and Cost Savings Act, §§ 2 et seq., 404 as amended 15 U.S.C.A. §§ 1901 et seq., 1984.—U.S. v. Crippen, 570 F.2d 535, rehearing denied 579 F.2d 340, certiorari denied 99 S.Ct. 837, 439 U.S. 1069, 59 L.Ed.2d 34.—Perj 11(7).

C.A.5 (Fla.) 1976. General standard of materiality that best comports with policies of federal securities rule prohibiting issuance of false or misleading proxy statements is that omitted fact is “material” if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—Gladwin v. Medfield Corp., 540 F.2d 1266.—Sec Reg 49.22(2).

C.A.11 (Ga.) 2001. For purposes of establishing a *Giglio* violation, falsehood is deemed to be “material” if there is any reasonable likelihood that the false testimony could have affected judgment of the jury.—Brown v. Head, 272 F.3d 1308, rehearing and rehearing denied 285 F.3d 1325, certiorari denied 123 S.Ct. 476, 154 L.Ed.2d 338.—Crim Law 706(2).

C.A.11 (Ga.) 1995. Evidence indicating that last time someone other than defendant saw victim alive was day after state alleged that she was murdered was not “material” for *Brady* purposes, where witness’ testimony established that defendant was with victim during sighting, which contradicted defendant’s claim that he had last seen victim day before sighting, and where witness’ testimony established that defendant told victim to pay for purchase with cash, instead of check, which indicated that defendant did not want victim’s whereabouts to be traced.—Felker v. Thomas, 52 F.3d 907, opinion supplemented on denial of rehearing 62 F.3d 342, certiorari denied 116 S.Ct. 956, 516 U.S. 1133, 133 L.Ed.2d 879, rehearing denied 116 S.Ct. 1456, 517 U.S. 1151, 134 L.Ed.2d 575.—Crim Law 700(3).

C.A.11 (Ga.) 1994. Undisclosed evidence is “material,” for *Brady* purposes, only if there is reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different. U.S.C.A. Const.Amends. 5, 6.—U.S. v. Newton, 44 F.3d 913, certiorari denied 116 S.Ct. 161, 516 U.S. 857, 133 L.Ed.2d 104, certiorari denied Moss v. U.S., 116 S.Ct. 161, 516 U.S. 857, 133 L.Ed.2d 104, certiorari denied Batten v. U.S., 116 S.Ct. 161, 516 U.S. 857, 133 L.Ed.2d 104, certiorari denied Brown v. U.S., 116 S.Ct. 162, 516 U.S. 857, 133 L.Ed.2d 104.—Crim Law 700(2.1).

C.A.11 (Ga.) 1993. Defendant’s failure to inform his probation officer of all of his aliases and about his prior misdemeanor conviction under a different name was “material” in determination of sentence within appropriate guidelines range, and thus warranted two-level enhancement of offense level under guidelines for “obstruction of

justice," in sentencing defendant on conviction as a previously deported alien who reentered without advance permission; although misdemeanor conviction was not countable in criminal history calculation, such information, if believed, would have tended to influence sentence within appropriate guideline range. U.S.S.G. §§ 3C1.1, 3C1.1, comment. (nn.3–5), 18 U.S.C.A.App.—U.S. v. Odolina, 980 F.2d 705.—Sent & Pun 761.

C.A.5 (Ga.) 1981. Under Georgia law, for purposes of determining whether insured is precluded from recovering under policy on grounds of misrepresentation, omission, concealment or incorrect statement, misrepresentation or omission is "material" if it would be consideration in insurer's determination to issue policy. Ga.Code, § 56-2409.—Casey Enterprises, Inc. v. American Hardware Mut. Ins. Co., 655 F.2d 598.—Insurance 2958, 2965.

C.A.9 (Hawaii) 2001. False statement is "material," as required to support visa fraud conviction, where it is capable of affecting or influencing government's decision; false statement need not actually influence government official, and official need not rely on statement in fact, as long as statement is "capable" of having such influence on government. 18 U.S.C.A. § 1546(a).—U.S. v. Matsumaru, 244 F.3d 1092.—Aliens 55.1.

C.A.9 (Idaho) 2001. Exculpatory evidence is "material," and thus must be disclosed by prosecution under *Brady*, if there is a reasonable probability, which is a probability sufficient to undermine confidence in the outcome, that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—Paradis v. Arave, 240 F.3d 1169.—Crim Law 700(2.1).

C.A.7 (Ill.) 2002. Village redevelopment authority's failure to provide full-time, designated liaison for redevelopment project was "material" breach of authority's contract with developer under Wisconsin law, inasmuch as failure to appoint liaison, notwithstanding developer's repeated requests to comply with contract, placed strain on parties' relationship, resulted in waste of developer's time and resources in trying to secure outside source for liaison work, and deprived developer of rights under contract and its ability to fulfill its duties. Restatement (Second) of Contracts § 241.—Designer Direct, Inc. v. DeForest Redevelopment Authority, 313 F.3d 1036, rehearing denied.—Mun Corp 356.

C.A.7 (Ill.) 2002. A breach is "material," under Wisconsin contracts law, if it destroys the essential object of the agreement.—Designer Direct, Inc. v. DeForest Redevelopment Authority, 313 F.3d 1036, rehearing denied.—Contracts 317.

C.A.7 (Ill.) 2001. Evidence is "material," for *Brady* purposes, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Williams, 272 F.3d 845, amended on clarification, certiorari denied Mitchell v. U.S., 122 S.Ct. 1339, 535 U.S. 947, 152 L.Ed.2d 243.—Crim Law 700(2.1).

C.A.7 (Ill.) 2001. Probation records, which indicated that defendant had been given permission to travel to New Jersey at same time that he was allegedly involved in narcotics transaction in Texas, were not "material" to his defense, so that government's delay in disclosing these records did not require that defendant be granted new trial on *Brady* grounds, where defendant was well aware of any information contained in records, and records themselves were properly excluded at trial for lack of adequate foundation.—U.S. v. Williams, 272 F.3d 845, amended on clarification, certiorari denied Mitchell v. U.S., 122 S.Ct. 1339, 535 U.S. 947, 152 L.Ed.2d 243.—Crim Law 919(1).

C.A.7 (Ill.) 2001. Factual disputes are "genuine," for purpose of precluding summary judgment, only if the evidence is such that a reasonable jury could return a verdict for the non-movant, and are "material" only when they might affect the outcome of the suit under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Packman v. Chicago Tribune Co., 267 F.3d 628.—Fed Civ Proc 2470.1.

C.A.7 (Ill.) 2000. Even if certain statements made by alleged coconspirators during their plea colloquies constituted evidence favorable to defendant, undisclosed transcripts of plea colloquies as a whole were not "material" to defendant's case, given their overall inculpatory nature and evidence of guilt presented at trial, and therefore government was not required to disclose them pursuant to *Brady*.—U.S. v. Irerere, 228 F.3d 816, post-conviction relief denied 2002 WL 31133281.—Crim Law 700(3).

C.A.7 (Ill.) 2000. Evidence is "material" for purposes of alleged *Brady* disclosure violation only if there exists a reasonable probability that its disclosure to the defense would have changed the result of the trial.—U.S. v. Irerere, 228 F.3d 816, post-conviction relief denied 2002 WL 31133281.—Crim Law 700(2.1).

C.A.7 (Ill.) 1999. A statement is "material," for purpose of bank fraud prosecution, if it would be capable of influencing the decisionmaker's decision; there is no requirement that the statement must in fact influence the decisionmaker, so the proper inquiry addresses not the defendant's ability to influence, but rather the nature of the statements made. 18 U.S.C.A. § 1344.—U.S. v. Reynolds, 189 F.3d 521, rehearing denied.—Banks 509.10.

C.A.7 (Ill.) 1999. Defendant's false statements regarding his financial condition could clearly influence a bank deciding whether to approve a loan, even if they did not in fact influence the decision, and thus were sufficiently "material" to support bank fraud conviction. 18 U.S.C.A. § 1344.—U.S. v. Reynolds, 189 F.3d 521, rehearing denied.—Banks 509.10.

C.A.7 (Ill.) 1999. For purposes of government's *Brady* obligation to disclose material, exculpatory evidence, favorable evidence will be considered "material" if its suppression undermines confidence in the outcome of the trial.—U.S. v. Bhutani, 175 F.3d 572, rehearing and suggestion for rehearing

denied, certiorari denied 120 S.Ct. 1173, 528 U.S. 1161, 145 L.Ed.2d 1082, appeal after remand 266 F.3d 661, rehearing and rehearing denied, certiorari denied 122 S.Ct. 2587, 536 U.S. 922, 153 L.Ed.2d 777.—Crim Law 700(2.1).

C.A.7 (Ill.) 1998. False statement is "material," within meaning of statute proscribing making false statements in tax return on material matter, when it has potential for hindering efforts of Internal Revenue Service (IRS) to monitor and verify tax liability of taxpayer. 26 U.S.C.A. § 7206(1).—U.S. v. Peters, 153 F.3d 445, certiorari denied 119 S.Ct. 801, 525 U.S. 1070, 142 L.Ed.2d 663.—Int Rev 5263.30.

C.A.7 (Ill.) 1998. Defendant's responses to questions on cross-examination going to his credibility are not necessarily "material," for purposes of perjury statute; certain lies on cross-examination might be too trivial to count as being relevant to the question of credibility, and some cases might involve such irrefutable and objective proof that the issue of the defendant's credibility is itself a minor consideration and not one capable of influencing the jury's decision. 18 U.S.C.A. § 1623(a).—U.S. v. Akram, 152 F.3d 698.—Perj 11(9).

C.A.7 (Ill.) 1998. Defendant's false testimony in child molestation prosecution, claiming a substantial past in law enforcement, played an important part in whether the jury would believe that he had molested victim, and thus, his statements were "material," as required for perjury conviction; victim testified that defendant had warned he would use his "position" to have her arrested or deported if she told anybody about the attacks, and that he would even kill her, and the jury would have had a very different picture of the molestation charges if it had believed defendant to be the modest, unassuming individual he claimed to be, instead of a person who put on airs about his tough law enforcement background and who threatened his victims into silence under color of authority. 18 U.S.C.A. § 1623(a).—U.S. v. Akram, 152 F.3d 698.—Perj 11(9).

C.A.7 (Ill.) 1998. Defendant's false statement in stock subscription form submitted to mutual savings institution converting to stock form, that stock was being purchased for depositor, was "material," as required to support securities fraud claim; issuer would not have issued stock had it known identities of real purchasers. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 12 C.F.R. § 563b.3; 17 C.F.R. § 240.10b-5.—S.E.C. v. Jakubowski, 150 F.3d 675, certiorari denied 119 S.Ct. 868, 525 U.S. 1103, 142 L.Ed.2d 770.—Sec Reg 60.46.

C.A.7 (Ill.) 1998. Computer files containing child pornography constituted "material" within meaning of sentence enhancement applicable if material that is subject of offense involved prepubescent minor or minor under age of twelve years. U.S.S.G. § 2G2.4(b)(1), 18 U.S.C.A.—U.S. v. Hall, 142 F.3d 988.—Sent & Pun 732.

C.A.7 (Ill.) 1998. A fact is "material," so as to preclude summary judgment, only if it might affect outcome of case under governing law. Fed.Rules

Civ.Proc.Rule 56, 28 U.S.C.A.—Mers v. Marriott Intern. Group Accidental Death, Dismemberment Plan, 137 F.3d 510, opinion vacated, on rehearing 144 F.3d 1014, certiorari denied 119 S.Ct. 372, 525 U.S. 947, 142 L.Ed.2d 307.—Fed Civ Proc 2470.1.

C.A.7 (Ill.) 1997. Fingerprint evidence lifted from rape scene and areas known or thought to have been touched by assailant was not "material" under *Brady* rule, even though none of prints obtained belonged to defendant, in that there was no reasonable probability that evidence would have affected trial's outcome, given overwhelming evidence of defendant's guilt; thus, state's improper failure to disclose evidence was not constitutional violation supporting habeas corpus relief. 28 U.S.C.(1994 Ed.) § 2254.—Lieberman v. Washington, 128 F.3d 1085.—Crim Law 700(3).

C.A.7 (Ill.) 1997. For purposes of statute requiring claimant to show that there is new evidence which is material for claimant to be entitled to remand from district court to administrative law judge for further consideration of entitlement to social security benefits, evidence is "material" if there is a reasonable probability that Commissioner would have reached a different conclusion had evidence been considered. Social Security Act, § 1205(g), as amended, 42 U.S.C.A. § 405(g).—Perkins v. Chater, 107 F.3d 1290.—Social S 149.

C.A.7 (Ill.) 1996. Fact is "material" for summary judgment purposes only if it might affect outcome of case under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Swaback v. American Information Technologies Corp., 103 F.3d 535.—Fed Civ Proc 2470.1.

C.A.7 (Ill.) 1995. To receive new trial for either knowing use of false testimony or suppression of exculpatory evidence, defendant was required to establish that the evidence was "material," that is, that there was reasonable probability that, had it not been for the improprieties, defendant would have been acquitted.—U.S. v. Maloney, 71 F.3d 645, rehearing and suggestion for rehearing denied, certiorari denied 117 S.Ct. 295, 519 U.S. 927, 136 L.Ed.2d 214.—Crim Law 919(1).

C.A.7 (Ill.) 1995. Whether statement is "material" for purposes of Securities Exchange Act of 1934 and SEC rules prohibiting manipulative or deceptive misstatements and omissions occurring in connection with the purchase or sale of a security, depends on how it affects an investor's perception of the security; if the court determines that there is substantial likelihood that disclosure of the information would have been viewed by the reasonable investor to have significantly altered the total mix of information, statement is material. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Searls v. Glasser, 64 F.3d 1061, rehearing and suggestion for rehearing denied.—Sec Reg 60.28(11).

C.A.7 (Ill.) 1994. Suppression by the prosecution of evidence favorable to defendant upon request violates due process, where evidence is material either to guilt or to punishment; however, evidence is not "material" unless it is reasonably

probable that result of proceeding would have been different if evidence had been disclosed. U.S.C.A. Const.Amend. 14.—*Milone v. Camp*, 22 F.3d 693, certiorari denied 115 S.Ct. 720, 513 U.S. 1076, 130 L.Ed.2d 626.—Const Law 268(5).

C.A.7 (Ill.) 1994. Witness' statements that he saw coconspirator deliver cocaine to defendant on two occasions and that coconspirator told witness that defendant was a "new guy" who "wasn't buying much" were not "material" to defendant's drug conspiracy conviction and, thus, could not form basis for *Brady* violation; when defendant first began buying cocaine, he would be classified as "new guy" and witness' testimony that defendant was "new guy" did not weaken the other evidence that, after that point, defendant dealt with coconspirator "major big time" and witness' testimony simply added two more transactions to transactions already in evidence and supported by coconspirator's testimony and defendant's own words in his telephone conversations with coconspirator and adding more transactions, of whatever size, was unlikely to bolster defendant's defense.—U.S. v. Kozinski, 16 F.3d 795, denial of post-conviction relief affirmed *Roberts v. Peters*, 129 F.3d 119, habeas corpus dismissed by *Brennan v. Lamanna*, 1999 WL 1009872.—Crim Law 700(3).

C.A.7 (Ill.) 1994. Evidence is "material," for purpose of *Brady* claim, if there is reasonable probability that outcome would have been different had evidence been disclosed to defense; "reasonable probability" is probability sufficient to undermine confidence in outcome of trial.—*Jones v. Washington*, 15 F.3d 671, certiorari denied 114 S.Ct. 2753, 512 U.S. 1241, 129 L.Ed.2d 870, rehearing denied 115 S.Ct. 28, 512 U.S. 1278, 129 L.Ed.2d 926.—Crim Law 700(4).

C.A.7 (Ill.) 1993. False information given by defendant to probation officer regarding defendant's identity was clearly "material" justifying two-level increase in base offense level for obstruction of justice in sentencing defendant on armed-robbery charges, where giving of false information thwarted probation officer from investigating defendant's personal and criminal history which were major factors in determining defendant's sentence. U.S.S.G. § 3C1.1, comment. (n.5), 18 U.S.C.A.App.—U.S. v. Thomas, 11 F.3d 1392.—Sent & Pun 761.

C.A.7 (Ill.) 1993. Evidence is "material" under *Brady* if, had it been disclosed, there is reasonable probability that outcome of trial would have been different. U.S.C.A. Const.Amend. 5, 14.—U.S. v. Dimas, 3 F.3d 1015.—Const Law 268(5).

C.A.7 (Ill.) 1993. In light of written financial information provided investor about subsidiary prior to purchase of subsidiary's stock, reasonable investor would not have considered parent's statements about subsidiary's financial health "material" for purposes of federal securities claim. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Ryan v. Wersi Electronics GmbH and Co.*, 3 F.3d 174, on remand 1994 WL 282323,

affirmed 59 F.3d 52, rehearing denied.—Sec Reg 60.27(5).

C.A.7 (Ill.) 1993. Statement is "material" for purposes of offense of false statement before grand jury if it has potential to impede, influence or dissuade grand jury from pursuing its investigation, but government does not need to prove that grand jury's investigation was actually impeded. 18 U.S.C.A. § 1623.—U.S. v. Gulley, 992 F.2d 108.—Perj 11(2).

C.A.7 (Ill.) 1993. Any misrepresentations that depositor made regarding existence of corporation in whose name he deposited check, or regarding his authority to draw on corporation's account, were not "material" under bank fraud statute, given complete lack of evidence that bank would not have cashed check or allowed depositor to reach funds were it not for such misrepresentations.—U.S. v. Davis, 989 F.2d 244.—Banks 509.10.

C.A.7 (Ill.) 1992. Securities dealer's failure to disclose that oil field in which waterflooding operation was to be conducted in attempt to retrieve more oil had also been the site of previous waterflooding operation was "material" omission, such as might support federal securities fraud claim. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l (2).—*Ambrosino v. Rodman & Renshaw, Inc.*, 972 F.2d 776.—Sec Reg 25.57.

C.A.7 (Ill.) 1992. Statement is "material" for purposes of determining if failure to reveal information to investors was securities fraud, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered "total mix" of information available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 28 U.S.C.A. § 636(c).—*Pommer v. Medtest Corp.*, 961 F.2d 620.—Sec Reg 60.28(11).

C.A.7 (Ill.) 1991. Alteration to contract is "material" if consent to it cannot be presumed.—*Union Carbide Corp. v. Oscar Mayer Foods Corp.*, 947 F.2d 1333.—Alt of Inst 2.

C.A.7 (Ill.) 1988. Statement is "material" for purposes of federal securities law only if it so alters total mix of information available to investor that it has potential to affect decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*LHLC Corp. v. Cluett, Peabody & Co., Inc.*, 842 F.2d 928, certiorari denied 109 S.Ct. 311, 488 U.S. 926, 102 L.Ed.2d 329.—Sec Reg 60.46.

C.A.7 (Ill.) 1985. For purposes of the Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b), and Rule 10b-5, an omission or misstatement is "material" if there is substantial likelihood that, under all the circumstances, the omitted or misstated fact would have assumed actual significance in deliberations of reasonable shareholder, with materiality of information misstated or withheld determined in light of what defendants knew at time plaintiff committed himself to sell stock.—*Michaels v. Michaels*, 767 F.2d 1185, certiorari denied 106 S.Ct. 797, 474 U.S. 1057, 88 L.Ed.2d 774.—Sec Reg 60.28(11).

C.A.7 (Ill.) 1985. A misrepresentation is "material" if it relates to a matter upon which plaintiff could be expected to rely in determining to engage in the conduct in question.—Barrington Press, Inc. v. Morey, 752 F.2d 307.—Fraud 18.

C.A.7 (Ill.) 1958. "Materiality" with reference to evidence means the property of substantial importance and evidence is "material" where it is relevant and goes to substantial matters in dispute or has a legitimate or effective bearing on the decision thereof, while evidence is "competent" if it is fit for the purpose for which it is offered.—U.S. v. De Lucia, 256 F.2d 487, certiorari denied 79 S.Ct. 59, 358 U.S. 836, 3 L.Ed.2d 72, rehearing denied 79 S.Ct. 152, 358 U.S. 896, 3 L.Ed.2d 123.—Evid 143, 148.

C.A.7 (Ind.) 2000. Statements were "material," for purposes of sentence enhancement for obstruction of justice, where they would tend to influence the decisionmaking body to which they were addressed. U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Kroledge, 201 F.3d 900.—Sent & Pun 761.

C.A.7 (Ind.) 2000. Although misstatements made to investigators that do not force investigators to expend additional resources are not "material" for purposes of sentence enhancement for obstruction of justice, pretrial statements that significantly obstruct or impede an investigation are material and may serve as the basis for an enhancement. U.S.S.G. §§ 3C1.1, 3C1.1, comment. (n.6), 18 U.S.C.A.—U.S. v. Kroledge, 201 F.3d 900.—Sent & Pun 761.

C.A.7 (Ind.) 2000. Evidence that defendant obstructed justice by attempting to influence the testimony of a witness supported sentence enhancement, as her misstatements were "material" even though she later corrected them by telling the truth to FBI investigators, where the misstatements went well beyond a mere declaration of innocence, but instead attempted to lead investigators on a "wild goose chase" in order to obscure evidence of defendant's own criminal conduct. U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Kroledge, 201 F.3d 900.—Sent & Pun 761.

C.A.7 (Ind.) 1999. Under provision allowing district court to remand case to Commissioner of Social Security for further action upon showing that there is new evidence which is material and that there is good cause for failure to incorporate such evidence into record in prior proceeding, for new evidence to be "material," it must relate to claimant's condition during relevant time period encompassed by disability application under review. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—Johnson v. Apfel, 191 F.3d 770.—Social S 149.

C.A.7 (Ind.) 1997. Under Indiana law, insured's failure to mention its ownership of airplane in foreign county in its application for umbrella liability policy was not "material" misrepresentation rendering policy voidable, where insurer believed, though erroneously, that policy's aircraft exclusion barred coverage for accidents involving any aircraft owned by insured, as demonstrated by insurer's

refusal to add more comprehensive aircraft exclusion following crash of another airplane that insured had purchased after issuance of policy, by insurer's like refusal to add such exclusion after learning of existence of foreign airplane, and by insurer's continued support of position that existing exclusion barred coverage throughout litigation over coverage for claims arising out of crash.—American Nat. Fire Ins. Co. v. Rose Acre Farms, Inc., 107 F.3d 451.—Insurance 2998.

C.A.7 (Ind.) 1997. Under Indiana law, misrepresentation in insurance policy is "material" rendering policy voidable, if fact misrepresented, had it been known to insurer, would have reasonably entered into and influenced insurer's decision whether to issue policy or to charge higher premium.—American Nat. Fire Ins. Co. v. Rose Acre Farms, Inc., 107 F.3d 451.—Insurance 2958.

C.A.7 (Ind.) 1996. Evidence is considered "material" under *Brady* only if there is reasonable probability that disclosure of that evidence to defense would have changed result of trial; there is reasonable probability of changed result where government's suppression of evidence undermines confidence in outcome of trial.—U.S. v. Payne, 102 F.3d 289, rehearing denied.—Crim Law 700(2.1).

C.A.7 (Ind.) 1996. Evidence is "material" as required in order to succeed on claim that favorable information was improperly withheld from defendant, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Quinn, 83 F.3d 917.—Crim Law 700(2.1).

C.A.7 (Ind.) 1995. For purposes of rules prohibiting insider trading on basis of material nonpublic information relating to tender offer that is not disclosed before trading, information is "material" if substantial likelihood exists that reasonable investor would find information significant in deciding whether to buy or sell security, and on what terms to buy or sell. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); Securities Exchange Act of 1934, § 14(e), 15 U.S.C.A. § 78n(e); 17 C.F.R. §§ 240.10b-5, 240.14e-3.—S.E.C. v. Maio, 51 F.3d 623.—Sec Reg 52.38, 60.28(11).

C.A.7 (Ind.) 1993. If party moving for summary judgment initially shows court that there is absence of question of fact, nonmoving party has burden of establishing that genuine issue as to any material fact actually does exist; fact is "material" only if it might affect outcome of case under governing law.—Anweiler v. American Elec. Power Service Corp., 3 F.3d 986.—Fed Civ Proc 2470.1, 2544.

C.A.7 (Ind.) 1988. Even assuming that corporations in which debtor and husband had ownership interests were essentially worthless, truthful disclosure of ownership of corporations was important in enabling trustee to trace debtor's assets and to determine whether assets might have been fraudulently transferred, and thus, debtor's misstatements indicating that she was 51 percent owner of three corporations from date of incorporation were "material" as required for conviction of bankruptcy

fraud. 18 U.S.C.A. § 152.—U.S. v. Key, 859 F.2d 1257.—Bankr 3861.

C.A.7 (Ind.) 1986. For alleged false statement to be “material” it must be capable of influencing tribunal on issue before it. 18 U.S.C.A. § 1623.—U.S. v. Anderson, 798 F.2d 919.—Perj 11(2).

C.A.8 (Iowa) 2000. For purposes of government’s *Brady* obligation to disclose material, favorable evidence to defendant, omitted evidence is “material” where it creates a reasonable doubt that did not otherwise exist. U.S.C.A. Const.Amend. 5.—U.S. v. Wadlington, 233 F.3d 1067, certiorari denied 122 S.Ct. 552, 534 U.S. 1023, 151 L.Ed.2d 428.—Crim Law 700(2.1).

C.A.8 (Iowa) 2000. Exculpatory evidence is “material,” and required to be disclosed under *Brady*, when reasonable probability exists that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Ditt-rich, 204 F.3d 819, certiorari denied 121 S.Ct. 594, 531 U.S. 1024, 148 L.Ed.2d 508.—Crim Law 700(2.1).

C.A.8 (Iowa) 1999. Evidence is considered “material” for purposes of the *Brady* rule, which requires government’s disclosure of material, exculpatory evidence, where a reasonable probability exists that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—Lingle v. Iowa, 195 F.3d 1023.—Crim Law 700(2.1).

C.A.8 (Iowa) 1998. Evidence is “material” under *Brady*, and prosecution has duty to disclose evidence, if there is reasonable probability, or probability sufficient to undermine confidence in outcome, that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 5.—U.S. v. Ryan, 153 F.3d 708, rehearing denied, certiorari denied 119 S.Ct. 1454, 526 U.S. 1064, 143 L.Ed.2d 541.—Crim Law 700(2.1).

C.A.8 (Iowa) 1996. Evidence is “material” for purposes of *Brady* disclosure analysis only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 5.—U.S. v. Kime, 99 F.3d 870, rehearing and rehearing denied (#95-3160), certiorari denied 117 S.Ct. 1015, 519 U.S. 1141, 136 L.Ed.2d 892, certiorari denied Bell v. U.S., 117 S.Ct. 1714, 520 U.S. 1220, 137 L.Ed.2d 838, appeal after remand 205 F.3d 1347, certiorari denied 120 S.Ct. 1706, 529 U.S. 1081, 146 L.Ed.2d 509.—Crim Law 700(2.1).

C.A.8 (Iowa) 1991. For purposes of determining whether defendant is entitled to disclosure of confidential informant’s identity because informant’s testimony will be material to case, evidence is “material” only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; disclosure is generally not “material” to outcome of case where informant merely conveys information to Govern-

ment but neither witnesses nor participates in offense.—U.S. v. Harrington, 951 F.2d 876.—Crim Law 627.10(1).

C.A.8 (Iowa) 1963. “Material,” as used in Social Security Act provision permitting rental from real estate to be considered self-employment income if derived under arrangement in which there is “material” participation by owner or tenant receiving rental in production or management of production of agricultural commodity, was to be given its common and well-understood meaning, and the phrase “material participation” was not to be given a strict, unnatural or narrow construction. Social Security Act, § 211(a)(1) as amended 42 U.S.C.A. § 411(a)(1).—Foster v. Celebrezze, 313 F.2d 604.—Social S 134.

C.A.10 (Kan.) 2002. Fact is “material,” for summary judgment purposes, if, under the governing law, it could have an effect on the outcome of the lawsuit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Sports Unlimited, Inc. v. Lankford Enterprises, Inc., 275 F.3d 996.—Fed Civ Proc 2470.1.

C.A.10 (Kan.) 2001. For the purpose of a motion for summary judgment, a fact is “material” if under the substantive law it is essential to the proper disposition of the claim. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—Wright ex rel. Trust Co. of Kansas v. Abbott Laboratories, Inc., 259 F.3d 1226.—Fed Civ Proc 2470.1.

C.A.10 (Kan.) 1991. Factual disputes that are not outcome-determinative are not “material” so as to preclude summary judgment.—Clifton v. Craig, 924 F.2d 182, certiorari denied 112 S.Ct. 97, 502 U.S. 827, 116 L.Ed.2d 68.—Fed Civ Proc 2470.1.

C.A.6 (Ky.) 2001. Required showing of materiality is a fairly low bar for the government to meet in a prosecution for the willful making of materially false statements in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States; in this context, a statement is “material” if it has the natural tendency to influence or is capable of influencing a federal agency, and a showing of actual influence, or actual agency reliance, is unnecessary. 18 U.S.C.A. § 1001.—U.S. v. White, 270 F.3d 356, 2001 Fed.App. 383P.—Fraud 68.10(4).

C.A.6 (Ky.) 2000. False oath is “material,” for denial of discharge purposes, if it bears a relationship to debtor’s business transactions or estate, or concerns the discovery of assets, business dealings, or existence and disposition of debtor’s property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Keeney, 227 F.3d 679, 2000 Fed.App. 341P.—Bankr 3282.1.

C.A.6 (Ky.) 1997. Statement is “material,” for purpose of prosecution for making materially false statement to federal agent, if statement has natural tendency to influence, or be capable of affecting or influencing, function entrusted to governmental agency; statement need not actually influence agency, but must have capacity to do so. 18 U.S.C.A. § 1001.—U.S. v. Rogers, 118 F.3d 466, 1997 Fed. App. 198P.—Fraud 68.10(4).

C.A.5 (La.) 2001. Fact issue is "material," for summary judgment purposes, if its resolution could affect outcome of action.—*Peel & Co., Inc. v. The Rug Market*, 238 F.3d 391.—*Fed Civ Proc* 2470.1.

C.A.5 (La.) 2000. Exculpatory evidence is "material," as required for its withholding to constitute a *Brady* violation, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and such a "reasonable probability" is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 14.—*Martin v. Cain*, 206 F.3d 450, certiorari granted, vacated 121 S.Ct. 32, 531 U.S. 801, 148 L.Ed.2d 4, on remand 246 F.3d 471, rehearing and rehearing denied 254 F.3d 72, certiorari denied 122 S.Ct. 194, 534 U.S. 885, 151 L.Ed.2d 136.—*Crim Law* 700(2.1).

C.A.5 (La.) 1998. Evidence is "material," for purpose of claim under *Brady*, only if reasonable probability exists that, had evidence been disclosed, result of proceeding would have been different.—*In re Smith*, 142 F.3d 832.—*Crim Law* 700(2.1).

C.A.5 (La.) 1997. Fact is "material," for summary judgment purposes, if it might affect outcome of suit under governing substantive law. *Fed.Rules Civ.Proc.Rule* 56, 28 U.S.C.A.—*U.S. v. Bloom*, 112 F.3d 200.—*Fed Civ Proc* 2470.1.

C.A.5 (La.) 1986. Suppressed evidence is "material" if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Brogdon v. Blackburn*, 790 F.2d 1164, rehearing denied 793 F.2d 1287, stay granted 107 S.Ct. 28, 478 U.S. 1037, 92 L.Ed.2d 778, certiorari denied 107 S.Ct. 1985, 481 U.S. 1042, 95 L.Ed.2d 824, rehearing denied 107 S.Ct. 3245, 483 U.S. 1012, 97 L.Ed.2d 749.—*Crim Law* 700(2.1).

C.A.5 (La.) 1984. Alleged misrepresentations by insured in overstating property loss due to fire by \$40,000 to \$70,000 concerned a "material" fact, though insurer was not induced thereby to act; attempt to deceive insurer would justify its refusal to pay.—*Mamco, Inc. v. American Employers Ins. Co.*, 736 F.2d 187.—*Insurance* 3185.

C.A.1 (Me.) 1997. Information is "material" and discoverable under *Brady* if there is a reasonable probability that, had the evidence been disclosed to defense, result of proceeding would have been different.—*U.S. v. Ciocca*, 106 F.3d 1079, new trial denied 2000 WL 230224.—*Crim Law* 700(2.1).

C.A.1 (Me.) 1996. "Genuine," in context of summary judgment rule, connotes that evidence on point is such that reasonable jury, drawing favorable inferences, could resolve fact in manner urged by nonmoving party, and "material" connotes that contested fact has potential to alter outcome of suit under governing law if controversy over it is resolved satisfactorily to nonmovant. *Fed.Rules Civ. Proc.Rule* 56(c), 28 U.S.C.A.—*Blackie v. State of Me.*, 75 F.3d 716.—*Fed Civ Proc* 2470.1.

C.A.4 (Md.) 1999. Witness' prior inconsistent statement, to his attorney, that he did not see

defendant on day of charged assault with intent to murder, which was contrary to his testimony before grand jury and at trial that he saw defendant fleeing from scene of assault on that day, was "material," within meaning of *Brady's* disclosure requirement, in view of lack of physical evidence linking defendant to the crime and weakness of other identification evidence, and notwithstanding fact that witness was impeached with his prior convictions and plea agreement.—*Spicer v. Roxbury Correctional Institute*, 194 F.3d 547.—*Crim Law* 700(4).

C.A.4 (Md.) 1993. In context of investors' claims under federal securities law, predictions made by corporation in its annual report about future growth were not "material"; report merely indicated that government regulatory changes created marketplace for certain services of corporation "with an expected annual growth rate of 10% to 30% over the next several years" and that division of corporation was "poised to carry the growth and success of [prior year] well into the future." Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Raab v. General Physics Corp.*, 4 F.3d 286.—*Sec Reg* 60.27(5).

C.A.4 (Md.) 1988. Under "misrepresentation" theory for determining when public employee's resignation is deprivation of property interest protected under due process clause, "resignation" may be found "involuntary" if induced by employee's reasonable reliance upon employer's "misrepresentation of material fact" concerning resignation, and misrepresentation is "material" if it concerns either consequences of resignation or alternative to resignation. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amends. 5, 14.—*Stone v. University of Maryland Medical System Corp.*, 855 F.2d 167.—*Const Law* 278.4(3).

C.A.4 (Md.) 1970. A fact is "material," within Securities Act prohibiting a person from offering or selling a security in interstate commerce by means of a prospectus or oral communication containing an untrue statement or material omission, if it concerns information about which an average prudent investor ought reasonably to be informed before purchasing security. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l(2).—*Johns Hopkins University v. Hutton*, 422 F.2d 1124, on remand 326 F.Supp. 250, opinion supplemented 343 F.Supp. 245, affirmed in part, reversed in part 488 F.2d 912, certiorari denied 94 S.Ct. 1622, 416 U.S. 916, 40 L.Ed.2d 118, certiorari denied 94 S.Ct. 1623, 416 U.S. 916, 40 L.Ed.2d 118.—*Sec Reg* 25.62(4).

C.A.4 (Md.) 1964. Evidence that certain members of union engaged in unlawful course of activity against employees could not be deemed "material" within provision of National Labor Relations Act empowering remand of case to Board where it is shown that evidence is material, where acts charged allegedly took place after November 1, 1962, while employer had been found to be in violation since April 1962 of his duty to bargain. National Labor Relations Act, §§ 8(a) (1, 5), 10(e) as amended 29 U.S.C.A. §§ 158(a) (1, 5), 160(e).—*Solo Cup Co. v. N. L. R. B.*, 332 F.2d 447.—*Labor* 687.1.

C.A.1 (Mass.) 2003. A “material” matter, for purposes of tax fraud prosecution, is one that is likely to affect the calculation of tax due and payable, or to affect or influence the Internal Revenue Service (IRS) in carrying out the functions committed to it by law, such as monitoring and verifying tax liability.—U.S. v. Boulterice, 325 F.3d 75.—Int Rev 5263.30.

C.A.1 (Mass.) 2002. Evidence is “material” for *Brady* purposes, and thus must be disclosed by prosecution, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 5.—U.S. v. Lemmerer, 277 F.3d 579, certiorari denied 123 S.Ct. 217, 154 L.Ed.2d 173.—Crim Law 700(2.1).

C.A.1 (Mass.) 2001. Evidence is “material,” for purposes of *Brady* rule requiring access to material exculpatory evidence, only when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—U.S. v. Benjamin, 252 F.3d 1.—Crim Law 700(2.1).

C.A.1 (Mass.) 1999. Under Massachusetts law, an employer’s misstatement concerning early retirement severance benefits is “material” for purposes of a misrepresentation claim if it is more likely than not that it would lead a reasonable employee to retire.—Rodowicz v. Massachusetts Mut. Life Ins. Co., 192 F.3d 162, as amended, rehearing en banc denied 195 F.3d 65.—Fraud 18.

C.A.1 (Mass.) 1999. Existence of Board-level dispute regarding strategic direction of corporation would be “material,” for purpose of shareholders’ claim that failure to disclose such dispute in registration statement for initial public offering (IPO) was omission of a material fact, in violation of securities statute, since it was substantially likely that reasonable investors would consider existence of such dispute important to their investment decision. Securities Act of 1933, § 11(a), 15 U.S.C.A. § 77k(a).—Cooperman v. Individual, Inc., 171 F.3d 43, rehearing denied.—Sec Reg 25.21(3).

C.A.1 (Mass.) 1998. A *Brady* error occurs when the prosecution suppresses “material” evidence that is favorable to the accused, and, in most circumstances, exculpatory evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—U.S. v. Rodriguez, 162 F.3d 135, rehearing and suggestion for rehearing denied, certiorari denied 119 S.Ct. 2034, 526 U.S. 1152, 143 L.Ed.2d 1044.—Crim Law 700(2.1).

C.A.1 (Mass.) 1998. Anticipated witness claimed memory loss, which prevented him from testifying in money laundering prosecution that he had handed defendant envelopes of cash in exchange for checks, was not “material” evidence that government had to disclose under *Brady*; witness did not retract statements that he laundered money through defendants’ business, evidence had impeachment value only if witness testified, and it was unlikely defendants would call witness themselves.

U.S.C.A. Const.Amend. 5.—U.S. v. Cunan, 152 F.3d 29.—Crim Law 700(3).

C.A.1 (Mass.) 1998. Undisclosed evidence is “material” for purposes of a *Brady* inquiry only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 5.—U.S. v. Cunan, 152 F.3d 29.—Crim Law 700(2.1).

C.A.1 (Mass.) 1998. For *Brady* disclosure purposes, exculpatory evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. U.S.C.A. Const.Amend. 5.—U.S. v. Shea, 150 F.3d 44, certiorari denied 119 S.Ct. 568, 525 U.S. 1030, 142 L.Ed.2d 473.—Crim Law 700(2.1).

C.A.1 (Mass.) 1997. Fact becomes “material,” for summary judgment purposes, when it has potential to affect outcome of suit. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Steinke v. Sungard Financial Systems, Inc., 121 F.3d 763.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1997. Fact is “material,” for summary judgment purposes, when it has potential to affect outcome of lawsuit.—Baybank v. Vermont Nat. Bank, 118 F.3d 30.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1997. For summary judgment purposes, “material” facts are those which possess capacity to sway outcome of litigation under applicable law.—Cadle Co. v. Hayes, 116 F.3d 957.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1997. Information is “material,” within meaning of federal securities laws, if there is reasonable likelihood that reasonable investor would consider it important. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Ansin v. River Oaks Furniture, Inc., 105 F.3d 745, certiorari denied 118 S.Ct. 70, 522 U.S. 818, 139 L.Ed.2d 31.—Sec Reg 60.28(11).

C.A.1 (Mass.) 1996. Information is “material,” within meaning of Securities and Exchange Commission (SEC) regulation requiring that prospectus disclose “to the extent material, . . . [t]he dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year,” when there is reasonable likelihood that reasonable investor would consider it important. 17 C.F.R. § 229.101(c)(1)(viii).—Glassman v. Computervision Corp., 90 F.3d 617.—Sec Reg 25.62(4).

C.A.1 (Mass.) 1996. Statement is “material,” for purposes of charge of making false statements, if it has natural tendency to influence or is capable of affecting or influencing government function.—U.S. v. Edgar, 82 F.3d 499, certiorari denied 117 S.Ct. 184, 519 U.S. 870, 136 L.Ed.2d 123.—Fraud 68.10(4).

C.A.1 (Mass.) 1996. Fact is “material” for purposes of summary judgment motion only when it possesses capacity, if determined as nonmovant

wishes, to alter outcome of lawsuit under applicable legal tenets. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Roche v. John Hancock Mut. Life Ins. Co.*, 81 F.3d 249.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1995. In summary judgment context, term “material” means that fact has capacity to sway outcome of litigation under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, certiorari denied 115 S.Ct. 2247, 515 U.S. 1103, 132 L.Ed.2d 255.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1994. For purposes of determining whether summary judgment should be granted, term “genuine” means that evidence about the fact is such that reasonable jury could resolve point in favor of nonmoving party, while term “material” means that fact has potential to affect the outcome of the suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Vasapolli v. Rostoff*, 39 F.3d 27.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1994. On motion for summary judgment, “material” fact is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Crawford v. Lamantia*, 34 F.3d 28, certiorari denied 115 S.Ct. 1393, 514 U.S. 1032, 131 L.Ed.2d 244, rehearing denied 115 S.Ct. 1994, 514 U.S. 1124, 131 L.Ed.2d 880.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1994. For summary judgment purposes, “genuine” means that evidence is such that reasonable jury could resolve point in favor of nonmovant and “material” means that fact has potential to affect outcome of the suit under the applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*NASCO, Inc. v. Public Storage, Inc.*, 29 F.3d 28, on remand 1995 WL 337072, on subsequent appeal 127 F.3d 148.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1992. Information involving securities being purchased or sold is “material” for purposes of establishing fraud only if its disclosure would alter total mix of facts available to investor and if there is substantial likelihood that reasonable shareholder would consider information important to investment decision; mere fact that investor might find information interesting or desirable to know does not satisfy materiality requirement. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Milton v. Van Dorn Co.*, 961 F.2d 965.—Sec Reg 60.28(11).

C.A.1 (Mass.) 1990. Witness’ statement to grand jury is “material,” within meaning of perjury statute, if statement is capable of influencing grand jury as to any proper matter pertaining to its inquiry, or if statement might have influenced grand jury or impeded its inquiry. 18 U.S.C.A. § 1623(a).—*U.S. v. Doherty*, 906 F.2d 41.—Perj 11(7).

C.A.6 (Mich.) 2002. Facts are “material,” for purposes of summary judgment proceedings, only if establishment thereof might affect the outcome of the lawsuit under governing substantive law; for summary judgment purposes, a complete failure of proof concerning an essential element necessarily renders all other facts immaterial. Fed.Rules Civ.

Proc.Rule 56(c), 28 U.S.C.A.—*Rodgers v. Monumental Life Ins. Co.*, 289 F.3d 442, 2002 Fed.App. 168P.—Fed Civ Proc 2470.1.

C.A.6 (Mich.) 2001. Fact is only “material,” for summary judgment purposes, if its resolution will affect outcome of lawsuit. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Wojcik v. City of Romulus*, 257 F.3d 600, 2001 Fed.App. 229P, rehearing en banc denied.—Fed Civ Proc 2470.1.

C.A.6 (Mich.) 1999. ERISA fiduciary’s misrepresentation is “material,” for purposes of principle that fiduciary breaches its duties by materially misleading plan participants, if there is substantial likelihood that it would mislead reasonable employee in making adequately informed decision in pursuing disability benefits to which he or she may be entitled. Employee Retirement Income Security Act of 1974, § 404, 29 U.S.C.A. § 1104.—*Krohn v. Huron Memorial Hosp.*, 173 F.3d 542, 1999 Fed. App. 122P.—Pensions 43.1.

C.A.6 (Mich.) 1998. Evidence is “material” within meaning of *Brady* disclosure requirement if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.—*U.S. v. Miller*, 161 F.3d 977, 1998 Fed.App. 344P, certiorari denied *Byrnes v. U.S.*, 119 S.Ct. 1275, 526 U.S. 1029, 143 L.Ed.2d 369.—Crim Law 700(2.1).

C.A.6 (Mich.) 1998. For a fact to be “material,” for purposes of rule providing that summary judgment is appropriate if there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law, fact must affect the outcome of the suit; factual disputes that are irrelevant or unnecessary will not be counted. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Smith v. Chrysler Corp.*, 155 F.3d 799, 1998 Fed.App. 288P.—Fed Civ Proc 2470.1.

C.A.6 (Mich.) 1989. Gas station operator’s understatement of gas purchases on his tax returns was “material” within meaning of Internal Revenue Code section making it a felony to make false statement on tax return; understatements restricted ability of Internal Revenue Service to verify returns on which it appeared. 26 U.S.C.A. § 7206(1).—*U.S. v. Fawaz*, 881 F.2d 259.—Int Rev 5263.30.

C.A.6 (Mich.) 1989. False statement on tax return is “material,” for purposes of statute making it a felony to make false statement on tax return, when it hampers Internal Revenue Service in verifying not only return on which it appears, but also related returns submitted by taxpayer or by business entity in which taxpayer has direct interest. 26 U.S.C.A. § 7206(1).—*U.S. v. Fawaz*, 881 F.2d 259.—Int Rev 5263.30.

C.A.8 (Minn.) 2002. Fact is “material,” as required to support § 10(b) and Rule 10b-5 claim, if it is substantially likely that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re K-tel Intern., Inc.

Securities Litigation, 300 F.3d 881, rehearing and rehearing denied.—Sec Reg 60.28(11).

C.A.8 (Minn.) 2002. “Material” information, as required to support § 10(b) and Rule 10b-5 claim, is that which would have assumed actual significance in deliberations of the reasonable shareholder; in contrast, fact is immaterial where reasonable investor could not have been swayed by the misrepresentation, as in the case of vague, soft, puffing statements or obvious hyperbole. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re K-tel Intern., Inc. Securities Litigation, 300 F.3d 881, rehearing and rehearing denied.—Sec Reg 60.28(11), 60.46.

C.A.8 (Minn.) 2000. Understatement of value of goods being exported on shipper’s export declaration form was capable of influencing official action, and thus amounted to “material” misrepresentation, for purpose of statute prohibiting making of false statements to United States, as values were used by customs officials in determining which outbound cargo to inspect, higher-valued cargo suggested high-technology goods whose export was subject to restriction, and values were used for statistical purposes affecting trade negotiations with other countries. 18 U.S.C.A. § 1001.—U.S. v. Chmielewski, 218 F.3d 840, post-conviction relief denied 2001 WL 1640050.—Fraud 68.10(4).

C.A.8 (Minn.) 2000. A false statement is “material,” within meaning of statute prohibiting making of false statements to United States, if it has a natural tendency to influence or was capable of influencing the government agency or official to which it was addressed. 18 U.S.C.A. § 1001.—U.S. v. Chmielewski, 218 F.3d 840, post-conviction relief denied 2001 WL 1640050.—Fraud 68.10(4).

C.A.8 (Minn.) 2000. For purposes of *Brady* rule requiring government’s disclosure of material, favorable evidence, evidence is considered “material” when a reasonable probability exists that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a “reasonable probability” is a probability sufficient to undermine confidence in the outcome of trial.—Dye v. Stender, 208 F.3d 662.—Crim Law 700(2.1).

C.A.8 (Minn.) 2000. Evidence that government had deals with two witnesses who testified at defendant’s trial would not have been “material” for purposes of *Brady* rule requiring disclosure of material, favorable evidence, given overwhelming circumstantial evidence of defendant’s guilt and extensive cross-examination to which witnesses were subjected.—Dye v. Stender, 208 F.3d 662.—Crim Law 700(4).

C.A.8 (Minn.) 1995. Evidence favorable to accused is “material” for purposes of *Brady* rule, so that failure of prosecution to disclose evidence may warrant grant of defendant’s motion to vacate sentence, only if there is reasonable probability that had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome.—U.S. v. Duke, 50 F.3d 571,

rehearing and suggestion for rehearing denied, certiorari denied 116 S.Ct. 224, 516 U.S. 885, 133 L.Ed.2d 154.—Crim Law 700(2.1), 1505.

C.A.8 (Minn.) 1992. False statements defendants made to Internal Revenue Service (IRS) were “material,” for purposes of defendants’ convictions for filing false tax forms, even though most of the forms were discovered before IRS issued notices to targeted individuals; filing even one of the forms could influence government action by causing IRS to send audit to victim. 26 U.S.C.A. § 7206(1).—U.S. v. Rosnow, 977 F.2d 399, rehearing denied 981 F.2d 970, certiorari denied Dewey v. U.S., 113 S.Ct. 1596, 507 U.S. 990, 123 L.Ed.2d 159, appeal after remand 9 F.3d 728, rehearing and rehearing denied (#93-1159), and rehearing and rehearing denied (#93-1156), and rehearing and rehearing denied (#93-1153), and rehearing and rehearing denied (#93-1157), and rehearing and rehearing denied (#93-1158), certiorari denied Sands v. U.S., 115 S.Ct. 120, 513 U.S. 838, 130 L.Ed.2d 65, rehearing denied 115—Int Rev 5263.30.

C.A.8 (Minn.) 1992. A genuine issue of fact is “material,” for purposes of summary judgment, if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Hartnagel v. Norman, 953 F.2d 394.—Fed Civ Proc 2470.1.

C.A.8 (Minn.) 1982. A statement or omitted fact is considered “material” for purposes of federal securities statutes if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision; whether or not the misrepresented or omitted fact is important turns on whether a reasonable investor would regard it as significantly altering the total mix of information made available. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l(2); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Austin v. Loftsgaarden, 675 F.2d 168, appeal after remand 768 F.2d 949, certiorari granted Randall v. Loftsgaarden, 106 S.Ct. 379, 474 U.S. 978, 88 L.Ed.2d 333, reversed 106 S.Ct. 3143, 478 U.S. 647, 92 L.Ed.2d 525.—Sec Reg 25.62(4), 60.28(11).

C.A.5 (Miss.) 2002. Section 8 housing owners’ alleged false certifications in housing assistance payment (HAP) vouchers, submitted to United States Department of Housing and Urban Development (HUD), that their property was in a “decent, safe, and sanitary” condition were “material,” as required to establish civil claim under the False Claims Act (FCA); HUD conditioned HAP payments upon certification of compliance with the “decent, safe, and sanitary” standard established in the HAP contract. 31 U.S.C.A. § 3729(a); 24 C.F.R. § 881.501.—U.S. v. Southland Management Corp., 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669.—U S 120.1.

C.A.5 (Miss.) 2001. Alleged fraudulent statement is “material” when, in deciding on course of action, reasonable man would attach importance to its existence, or when party making representation knows or has reason to know that its recipient

regards, or is likely to regard, matter as important, although reasonable man would not so regard it. Restatement (Second) of Torts § 538(2).—In re Mercer, 246 F.3d 391.—Fraud 18.

C.A.5 (Miss.) 2001. Chapter 7 debtor's implied, card-use representations as to her intent to repay credit card debt were "material," as matter of law, to credit card issuer's decision to extend credit, and would support finding of justifiable reliance upon issuer's part, as long as issuer had reason to believe that this intention would be carried out. Bankr. Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Mercer, 246 F.3d 391.—Bankr 3353(10), 3353(14.25).

C.A.5 (Miss.) 1997. False statement is "material" for purposes of bank fraud statute if it is shown to be capable of influencing decision of institution to which it was made. 18 U.S.C.A. § 1014.—U.S. v. Blocker, 104 F.3d 720.—Banks 509.20.

C.A.5 (Miss.) 1996. Erroneous statement of date on which consumer's right to rescind home improvement contract would expire, when coupled with contractor's premature performance of remodeling contract before rescissory period had even begun, constituted "material" breach of contractor's disclosure obligations under the Truth in Lending Act (TILA), of kind which entitled consumers to extended three-year period within which to rescind transaction; even assuming that consumers should reasonably have been aware that their rescissory rights had not expired on date specified in contractor's notice, they were facing a fait accompli as a result of contractor's premature performance. Truth in Lending Act, § 125(a, f), 15 U.S.C.A. § 1635(a, f).—Taylor v. Domestic Remodeling, Inc., 97 F.3d 96.—Cons Cred 51.

C.A.5 (Miss.) 1994. False statement is "material," for purposes of liability under criminal statute prohibiting making of false statements to banking institution, if it is shown to be capable of influencing decision of institution to which it was made, as analyzed in particular context in which statement was made. 18 U.S.C.A. § 1014.—U.S. v. Williams, 12 F.3d 452, rehearing denied.—Banks 509.20.

C.A.5 (Miss.) 1990. Nondisclosed statements by prosecution witnesses to police indicating that witnesses, who identified defendant as abductor of homicide victim at trial, were unable even to describe perpetrator were not "material" as to suppression hearing, guilt phase, or sentencing phase of capital murder trial, and thus, failure to disclose police records containing such statements was not *Brady* violation; police records indicated less detailed description of suspect and car than description given by officer at suppression hearing, but officer claimed that witnesses were initially more forthcoming regarding descriptions, circumstantial evidence of defendant's guilt was overwhelming, and evidence at punishment phase indicated that victim had been kidnapped, robbed, sexually assaulted, and brutally slain. U.S.C.A. Const.Amend. 14.—Smith v. Black, 904 F.2d 950, rehearing denied 912 F.2d 1465, certiorari granted, vacated 112 S.Ct. 1463, 503 U.S. 930, 117 L.Ed.2d 609, on remand 970 F.2d 1383, appeal after remand 9 F.3d 359,

appeal after remand 16 F.3d 638, certiorari denied 115 S.Ct. 151, 513 U.S. 851, 130 L.Ed.2d 90, certiorari denied 115 S.Ct. 98, 513 U.S. 828, 130 L.Ed.2d 47.—Crim Law 700(3); Sent & Pun 1747.

C.A.8 (Mo.) 2000. For purposes of violation of government's *Brady* duty to disclose favorable, material evidence, evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—Johns v. Bowersox, 203 F.3d 538, rehearing and rehearing denied 208 F.3d 724, certiorari denied 121 S.Ct. 629, 531 U.S. 1038, 148 L.Ed.2d 537.—Crim Law 700(2.1).

C.A.8 (Mo.) 2000. Witness' receipt of reward from citizen for testifying against defendant in capital murder trial was not "material," for purposes of claim that state's failure to disclose reward violated its *Brady* obligation to disclose favorable, material evidence; witness did not inquire about reward until after he had implicated defendant in murder, witness' credibility was impeached at trial, giving suppressed evidence limited impeachment value, and abundant evidence showed defendant's involvement in murder. U.S.C.A. Const.Amend. 14.—Johns v. Bowersox, 203 F.3d 538, rehearing and rehearing denied 208 F.3d 724, certiorari denied 121 S.Ct. 629, 531 U.S. 1038, 148 L.Ed.2d 537.—Crim Law 700(4).

C.A.8 (Mo.) 2000. Fictitious home address on form authorizing the Post Office to deliver defendant's mail to an agent was "material" for purposes of conviction for making a false statement to the government, where there was evidence that defendant intentionally made herself hard to find during the investigation of her fraudulent activities, and postmaster testified that the home address is necessary for the Post Office to carry out its core function of delivering the mail if the designated agent ceases operations. 18 U.S.C.A. § 1001.—U.S. v. Baker, 200 F.3d 558, rehearing denied.—Fraud 68.10(4).

C.A.8 (Mo.) 2000. False statement which jury found was material to postal inspector's investigation, in returning guilty verdict on charge of making a false statement to the government, and fictitious home address on Postal Service form, which contributed to the investigators' inability to find defendant for over four months, were "material" for purposes of sentence enhancement for obstruction of justice. U.S.S.G. §§ 3C1.1, 3C1.1, comment. (n. 4), 18 U.S.C.A.—U.S. v. Baker, 200 F.3d 558, rehearing denied.—Sent & Pun 761.

C.A.8 (Mo.) 1998. In order to be "material," evidence proffered in support of motion to remand on basis of new and material evidence must relate to social security disability claimant's condition on or before date of administrative law judge's decision. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).—Jackson v. Apfel, 162 F.3d 533.—Social S 149.

C.A.8 (Mo.) 1997. Statement of attorney for drug conspirator's wife, indicating he overheard wife tell government agent that she had no knowledge of drug laboratory on her property or of

killing that allegedly took place there, was not "material" in drug conspiracy prosecution, and thus government's failure to disclose it did not violate due process; it was not reasonably probable that wife's testimony would have altered trial's outcome, given nature of possible testimony, evidence corroborating story of witness testifying about killing, and other evidence supporting convictions. U.S.C.A. Const.Amend. 5; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 406, 21 U.S.C.A. § 846.—U.S. v. Dierling, 131 F.3d 722, rehearing and suggestion for rehearing denied, and rehearing and suggestion for rehearing denied, certiorari denied *Younger v. U.S.*, 118 S.Ct. 1379, 523 U.S. 1054, 140 L.Ed.2d 525, certiorari denied 118 S.Ct. 1401, 523 U.S. 1066, 140 L.Ed.2d 659, certiorari denied *Holt v. U.S.*, 118 S.Ct. 2310, 524 U.S. 922, 141 L.Ed.2d 168.—Const Law 268(5); Crim Law 700(3).

C.A.8 (Mo.) 1997. For purposes of due process disclosure requirements, evidence is "material" when there is reasonable probability that result of trial would have been different had government disclosed information; "reasonable probability" of different result is shown when nondisclosure undermines confidence in outcome of trial. U.S.C.A. Const.Amend. 5.—U.S. v. Dierling, 131 F.3d 722, rehearing and suggestion for rehearing denied, and rehearing and suggestion for rehearing denied, certiorari denied *Younger v. U.S.*, 118 S.Ct. 1379, 523 U.S. 1054, 140 L.Ed.2d 525, certiorari denied 118 S.Ct. 1401, 523 U.S. 1066, 140 L.Ed.2d 659, certiorari denied *Holt v. U.S.*, 118 S.Ct. 2310, 524 U.S. 922, 141 L.Ed.2d 168.—Const Law 268(5).

C.A.8 (Mo.) 1996. In securities fraud action, a fact is "material" if it is substantially likely that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available; this determination requires assessment of inferences a reasonable shareholder would draw from given set of facts and significance of those inferences to him. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525.—Sec Reg 60.28(11).

C.A.8 (Mo.) 1995. False statements made by defendant to presentence officer regarding his nationality, background, and family, which were later corrected, could not be considered "material" for purposes of sentencing enhancement provision for obstruction of justice, where sentencing report before judge was correct, where district court stated that false statements did not hinder prosecution of offense, and where government stated that false statements did not impede investigation. U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Cardona-Rivera, 64 F.3d 361.—Sent & Pun 761.

C.A.8 (Mo.) 1995. To demonstrate that evidence is "material," so that failure to disclose evidence constitutes violation of defendant's due process rights, defendant must show there is reasonable possibility that if allegedly suppressed evidence had been disclosed at trial result of proceeding would have been different. U.S.C.A.

Const.Amend. 5.—*Drew v. U.S.*, 46 F.3d 823, certiorari denied 116 S.Ct. 72, 516 U.S. 817, 133 L.Ed.2d 33.—Const Law 268(5); Crim Law 700(2.1).

C.A.8 (Mo.) 1995. "Reasonable probability" that if allegedly suppressed evidence had been disclosed at trial result of proceeding would have been different, as will make evidence "material" and prosecution's failure to disclose evidence a violation of defendant's due process rights, is probability sufficient to undermine reviewing court's confidence in outcome of proceeding. U.S.C.A. Const. Amend. 5.—*Drew v. U.S.*, 46 F.3d 823, certiorari denied 116 S.Ct. 72, 516 U.S. 817, 133 L.Ed.2d 33.—Const Law 268(5).

C.A.8 (Mo.) 1995. For purposes of *Brady* rule, evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. McGuire, 45 F.3d 1177, rehearing denied, certiorari denied *Mandacina v. U.S.*, 115 S.Ct. 2558, 515 U.S. 1132, 132 L.Ed.2d 811.—Crim Law 700(3).

C.A.8 (Mo.) 1994. Suppressed exculpatory evidence is "material", for purposes of claim for habeas corpus relief on claim of improperly suppressed exculpatory evidence, only if there is reasonable probability that, had evidence been disclosed, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—*Luton v. Grandison*, 44 F.3d 626, certiorari denied 115 S.Ct. 1262, 513 U.S. 1195, 131 L.Ed.2d 141.—Hab Corp 480.

C.A.8 (Mo.) 1994. For purposes of summary judgment motion, genuine issue of fact is "material" if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Saffels v. Rice*, 40 F.3d 1546, rehearing and suggestion for rehearing denied.—Fed Civ Proc 2470.1.

C.A.8 (Mo.) 1993. Evidence that prior occupant of motel room where rape occurred had told prosecutor that she had not had sex in room was not "material," particularly in light of occupant's subsequent recantation, and habeas petitioner therefore did not show prejudice to overcome his procedural default on claim that prosecutor failed to divulge occupant's statement, which allegedly would have supported petitioner's claim that semen stain on bedspread, which did not match petitioner's blood type, had been left by actual rapist; even absent recantation, elimination of one source of stain did not exonerate petitioner, particularly in light of other evidence against him, including identification by victim.—*Ruff v. Armontrout*, 993 F.2d 639, appeal after remand 77 F.3d 265, rehearing and suggestion for rehearing denied, certiorari denied 117 S.Ct. 226, 519 U.S. 889, 136 L.Ed.2d 158.—Hab Corp 409.

C.A.8 (Mo.) 1993. In patent infringement cases, it is equitable defense to enforcement of patent that applicant failed to disclose "material" information to patent trademark office, which is defined as information which reasonable examiner would have considered important in deciding whether to issue

patent.—*Gilbert/Robinson, Inc. v. Carrie Beverage-Missouri, Inc.*, 989 F.2d 985, rehearing denied, certiorari denied 114 S.Ct. 338, 510 U.S. 928, 126 L.Ed.2d 282.—Pat 97.

C.A.8 (Mo.) 1993. Fact not stated by party to securities transaction is “material,” for purposes of securities fraud claim, if it is substantially likely that reasonable investor would consider matter important in making investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Primary Care Investors, Seven, Inc. v. PHP Healthcare Corp.*, 986 F.2d 1208.—Sec Reg 60.28(11).

C.A.8 (Mo.) 1991. False statements on form documenting the payments of income including nonemployee compensation to individuals named on the form were “capable of influencing” the function of the Internal Revenue Service (IRS) and therefore were “material” as required for a conviction for making false statements to the IRS. 18 U.S.C.A. § 1001.—*U.S. v. Wodtke*, 951 F.2d 176, rehearing denied.—Int Rev 5263.30.

C.A.8 (Mo.) 1990. Misrepresentation on application for insurance may void policy if statement is both false and “material”; test of materiality is whether answer, if truthful, might reasonably influence insurer to reject risk or charge higher premium.—*American Standard Ins. Co. of Wisconsin v. Forsythe*, 915 F.2d 1212, rehearing denied.—Insurance 2957, 2958.

C.A.8 (Mo.) 1987. Defendant’s fictitious “valuation” of transceivers by declaring values of \$70,739 and \$116,616, even though true values were \$678,188.80 and \$1,226,160, constituted “trick,” “scheme,” or “device” which concealed or covered up material fact with respect to nature of articles being exported and was “material” for purpose of statutes criminalizing false statements with respect to matters within jurisdiction of United States. 18 U.S.C.A. §§ 1001, 1002.—*U.S. v. Gregg*, 829 F.2d 1430, certiorari denied 108 S.Ct. 1994, 486 U.S. 1022, 100 L.Ed.2d 226.—Fraud 68.10(4).

C.A.8 (Mo.) 1950. Any false testimony which impedes and hampers course of investigation is “material” for purposes of punishing witness, in the sense that it has a tendency to affect ultimate action of grand jury. 18 U.S.C.A. § 401(1).—*Howard v. U.S.*, 182 F.2d 908, vacated 71 S.Ct. 278, 340 U.S. 898, 95 L.Ed. 651.—Gr Jury 36.5(1).

C.A.9 (Mont.) 2002. A false promise, statement or representation is “material” if it is made to induce action or reliance by another or has a natural tendency to influence or is capable of influencing another’s decisions.—*U.S. v. LeVeque*, 283 F.3d 1098.—Fraud 18.

C.A.9 (Mont.) 2001. For evidence to be “material,” and thus subject to government’s *Brady* disclosure obligations, there must be a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*U.S. v. Robison*, 19 Fed.Appx. 490, certiorari denied *Johnston v. U.S.*, 122 S.Ct. 634,

534 U.S. 1049, 151 L.Ed.2d 553, appeal after remand 50 Fed.Appx. 887.—Crim Law 700(2.1).

C.A.9 (Mont.) 2001. To be “material,” so as to warrant remand of social security disability benefits case to administrative law judge (ALJ), new evidence must bear directly and substantially upon the matter in dispute. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—*Mayer v. Massanari*, 276 F.3d 453.—Social S 149.

C.A.8 (Neb.) 2002. Evidence is “material” if there is a reasonable probability that the outcome of the proceeding would have been different if the evidence had been disclosed.—*U.S. v. Hernandez*, 299 F.3d 984, certiorari denied 123 S.Ct. 918, 154 L.Ed.2d 825.—Crim Law 700(2.1).

C.A.8 (Neb.) 1999. Evidence is “material” under *Brady* only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*U.S. v. Whitehead*, 176 F.3d 1030.—Crim Law 700(2.1).

C.A.8 (Neb.) 1999. Pretrial statement by a commercial lender at one of the financial institutions involved in the scheme alleged in bank fraud charge, opining that defendant did not engage in check kiting, did not have to be disclosed under *Brady*, where the opinion was made available to the defense through a source other than the government, i.e., a defense interview with the lender himself, and the statement was not “material,” in that the government’s alleged suppression of the statement did not prevent the statement from surfacing at trial, yet the jury found defendant guilty.—*U.S. v. Whitehead*, 176 F.3d 1030.—Crim Law 700(3).

C.A.1 (N.H.) 2002. In the securities fraud context, a fact is “material” if it is substantially likely that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.—*In re Cabletron Systems, Inc.*, 311 F.3d 11.—Sec Reg 60.46.

C.A.1 (N.H.) 2002. Information which would have assumed actual significance in the deliberations of a reasonable shareholder is “material” in the securities fraud context.—*In re Cabletron Systems, Inc.*, 311 F.3d 11.—Sec Reg 60.46.

C.A.1 (N.H.) 2000. On motion for new trial under Rule of Criminal Procedure, the evidence must create an actual probability that an acquittal would have resulted if the evidence had been available, but if the government possesses *Brady* evidence and does not disclose it, it is usually said, subject to some caveats, that the non-disclosure warrants a new trial if the evidence is material, and it is “material” only if there is a reasonable probability that the evidence would have changed the result, and the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.—*U.S. v. Joselyn*, 206 F.3d 144.—Crim Law 919(1), 945(1).

C.A.1 (N.H.) 1996. For purposes of determining whether existence of genuine issue of material fact defeats summary judgment motion, "material" means that contested fact has potential to alter outcome of the suit under governing law if dispute over it is resolved favorably to nonmovant. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Smith v. F.W. Morse & Co., Inc.*, 76 F.3d 413.—Fed Civ Proc 2470.1.

C.A.1 (N.H.) 1994. Defendant was not entitled to new trial on ground that government had withheld possessed property reports showing that box of bullets had been seized from apartment, as report was not "material" evidence in prosecution for felon in possession of firearm; decisive issue at trial was possession, not how many rounds of ammunition were seized by police, and there was no reasonable probability that report would have changed jury's verdict. 18 U.S.C.A. § 922(g)(1).—*U.S. v. Rogers*, 41 F.3d 25, certiorari denied 115 S.Ct. 2287, 515 U.S. 1126, 132 L.Ed.2d 289, denial of post-conviction relief affirmed 180 F.3d 349, certiorari denied 120 S.Ct. 958, 528 U.S. 1126, 145 L.Ed.2d 831.—Crim Law 918(1).

C.A.3 (N.J.) 2003. Tax deductibility of bonus to be paid to corporate executive was "material" to proxy solicitation, even though potential deduction was small in relation to overall budget, since Treasury Regulations required management disclosure and stockholder approval of principal features of executive incentive compensation plan in order to qualify for deduction; materiality of required disclosure was not dependent on quantity of money involved, but on its purpose of informing stockholders. 26 C.F.R. § 1.162-27(e)(2, 4).—*Shaev v. Saper*, 320 F.3d 373.—Sec Reg 49.22(6).

C.A.3 (N.J.) 2002. Evidence is "material," for *Brady* purposes, if there is a reasonable probability that, had it been disclosed, the result of the proceeding would have been different.—*U.S. v. Perez*, 280 F.3d 318, certiorari denied 123 S.Ct. 231, 154 L.Ed.2d 98.—Crim Law 700(2.1).

C.A.3 (N.J.) 2002. Undisclosed statement of confidential informant, suggesting that defendant was involved in local drug distribution activities with others at a time when he was incarcerated, was not "material," so as to be subject to *Brady* disclosure by government in drug conspiracy trial, inasmuch as fact that others were engaged in drug-trafficking prior to defendant's release from prison did not negate witness' testimony that he recruited defendant after his release for express purpose of delivering cocaine for drug transaction. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 406, 21 U.S.C.A. § 846.—*U.S. v. Boone*, 279 F.3d 163, certiorari denied 122 S.Ct. 1986, 535 U.S. 1089, 152 L.Ed.2d 1042.—Crim Law 700(3).

C.A.3 (N.J.) 2002. Statement in which codefendant told investigator that another codefendant typically wrapped his drugs in brown paper bags was not "material," for purposes of defendant's *Brady* claim that government was required to disclose statement, given that another accomplice testified that cocaine which he delivered to defendant,

for delivery in drug transaction, was wrapped in brown paper bag, rendering statement cumulative.—*U.S. v. Boone*, 279 F.3d 163, certiorari denied 122 S.Ct. 1986, 535 U.S. 1089, 152 L.Ed.2d 1042.—Crim Law 700(3).

C.A.3 (N.J.) 2001. Misrepresentation of ERISA plan provision is "material" if there is substantial likelihood that it would mislead reasonable employee in making decision regarding his benefits under ERISA plan. Employee Retirement Income Security Act of 1974, § 502, 29 U.S.C.A. § 1132.—*Daniels v. Thomas & Betts Corp.*, 263 F.3d 66.—Pensions 47.

C.A.3 (N.J.) 2000. Misrepresentation or omitted fact is "material," for purpose of establishing securities fraud claim, if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to act. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*EP Medsystems, Inc. v. EchoCath, Inc.*, 235 F.3d 865.—Sec Reg 60.28(11), 60.46.

C.A.3 (N.J.) 2000. For purposes of establishing a securities fraud claim under Rule 10b-5, information concerning a tender offer or a proposed merger may be "material" to persons who trade in the securities of the target company, despite the highly contingent nature of both types of transactions. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5(b).—*Semerenko v. Cendant Corp.*, 223 F.3d 165, certiorari denied *Forbes v. Semerenko*, 121 S.Ct. 1091, 531 U.S. 1149, 148 L.Ed.2d 965, on remand *P. Schoenfeld Asset Management LLC v. Cendant Corp.*, 142 F.Supp.2d 589, reargument denied 161 F.Supp.2d 349, motion to certify appeal denied 161 F.Supp.2d 355.—Sec Reg 60.28(11), 60.46.

C.A.3 (N.J.) 1999. Under New Jersey law, a fact is "material," as required for misrepresentation of fact to be basis for fraud claim, if a reasonable person would attach importance to its existence or nonexistence in determining his or her choice of action in the transaction in question, or if the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his or her choice of action, although a reasonable person would not so regard it. Restatement (Second) of Torts § 538(2).—*Voilas v. General Motors Corp.*, 170 F.3d 367.—Fraud 18.

C.A.3 (N.J.) 1998. Fact is "material" for purposes of summary judgment if, under the substantive law of the case, it is outcome determinative. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Schoonejongen v. Curtiss-Wright Corp.*, 143 F.3d 120.—Fed Civ Proc 2470.1.

C.A.3 (N.J.) 1997. Ordinarily, securities law defines "material" information as information that would be important to reasonable investor in making his or her investment decision; in context of "efficient" market, concept of materiality translates into information that alters price of firm's stock. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R.

§ 240.10b-5.—In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410.—Sec Reg 60.46.

C.A.3 (N.J.) 1997. To be actionable under § 10(b), omission or misstatement must be “material,” something that would alter total mix of relevant information for reasonable investor making investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410.—Sec Reg 60.28(11), 60.46.

C.A.3 (N.J.) 1996. Factual issue must be both material and genuine to defeat motion for summary judgment; dispute is “material” if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Kowalski v. L & F Products, 82 F.3d 1283, on remand 1997 WL 351104.—Fed Civ Proc 2470.1.

C.A.3 (N.J.) 1993. For summary judgment purposes, fact is “material” if it might affect outcome of case, and issue is “genuine” if evidence is such that reasonable fact finder could return verdict in favor of nonmovant. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Headquarters Dodge, Inc., 13 F.3d 674.—Fed Civ Proc 2470.1.

C.A.3 (N.J.) 1993. For omission to be deemed “material” under securities laws, there must be substantial likelihood that its disclosure would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Act of 1933, §§ 11, 12(2), 15 U.S.C.A. §§ 77k, 77l(2); Securities Exchange Act of 1934, § 10, 15 U.S.C.A. § 78j; Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—In re Donald J. Trump Casino Securities Litigation-Taj Mahal Litigation, 7 F.3d 357, 130 A.L.R. Fed. 633, certiorari denied *Gollomp v. Trump*, 114 S.Ct. 1219, 510 U.S. 1178, 127 L.Ed.2d 565.—Sec Reg 25.21(3), 25.62(4), 60.28(11).

C.A.3 (N.J.) 1992. Omitted fact is “material,” for purposes of claim of fraud in purchase or sale of security, if there is substantial likelihood that, under all the circumstances, omitted fact would have assumed actual significance in deliberations of reasonable shareholder; in other words, issue is whether there is substantial likelihood that disclosure would have been viewed by reasonable investor as having significantly altered total mix of information available to that investor. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Shapiro v. UJB Financial Corp., 964 F.2d 272, as amended, and rehearing denied, certiorari denied 113 S.Ct. 365, 506 U.S. 934, 121 L.Ed.2d 278, on remand In re UJB Financial Corp. Shareholder Litigation, 1993 WL 418974.—Sec Reg 60.28(11).

C.A.3 (N.J.) 1987. Fact that a number of prior, contradictory statements of important prosecution witness had already been brought out did not mean that failure of state to disclose to defendant reports of lie detector test administered to witness was not “material,” for purposes of habeas corpus petition alleging violation of *Brady* rule requiring that prosecution not withhold evidence that was favorable to accused and material to guilt or punishment, where if reports had been disclosed to defense, defendant

petitioner would have been able to argue that prosecution had persuaded witness to return to version not because it was true, but because that was what lie detector test results demanded, and the inconsistency exposed by lie detector test report went to very heart of witness’ testimony. U.S.C.A. Const.Amends. 5, 14; 28 U.S.C.A. § 2254(d).—Carter v. Rafferty, 826 F.2d 1299, certiorari denied 108 S.Ct. 711, 484 U.S. 1011, 98 L.Ed.2d 661.—Hab Corp 670(1).

C.A.10 (N.M.) 2001. Implicit in requirement that evidence must be material in order to be subject to disclosure under *Brady* is a concern that the suppressed evidence might have affected the outcome of the trial, and evidence is therefore “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—U.S. v. Combs, 267 F.3d 1167.—Crim Law 700(2.1).

C.A.10 (N.M.) 2001. Issue of fact is “material,” for purposes of summary judgment, if under the governing law, it could have an effect on the outcome of the lawsuit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Ortiz v. Norton, 254 F.3d 889.—Fed Civ Proc 2470.1.

C.A.10 (N.M.) 1998. For defendant’s allegedly false statements at suppression hearing to be “material,” as required to support conviction for making false statement under oath, statements had to be capable of influencing judge on motion to suppress; statements did not have to be capable of influencing jury in its deliberations on defendant’s guilt or innocence on various drug charges against him. 18 U.S.C.A. § 1623.—U.S. v. Renteria, 138 F.3d 1328.—Perj 11(2).

C.A.10 (N.M.) 1994. False entries made by bank president and investors on loan approval and funding sheets, in connection with scheme to purchase bank by borrowing money from bank itself were “material,” for purposes of statute criminalizing bank officer’s making of false entries in book, report, or statement of bank with intent to deceive any agent or examiner; evidence was sufficient to support conclusion that president actively concealed nature of loans so that bank examiners would not realize source of funding. 18 U.S.C.A. § 1005.—U.S. v. Evans, 42 F.3d 586.—Banks 509.10.

C.A.10 (N.M.) 1994. Piece of bloody carpet with bullet hole in it which police removed from beneath victim’s head during murder investigation was not “material” evidence, and thus, prosecution’s failure to produce piece of carpet, despite numerous requests by defendant and promises by prosecution, did not establish due process violation under *Brady*, where there was other strong evidence indicating that defendant deliberately killed victim and result at trial would not have been different if defendant had had carpet in his possession. U.S.C.A. Const.Amends. 5, 14.—Fero v. Kerby, 39 F.3d 1462, certiorari denied 115 S.Ct. 2278, 515 U.S. 1122, 132 L.Ed.2d 282.—Const Law 268(5); Crim Law 700(3).

C.A.2 (N.Y.) 2002. In the context of a proxy statement, a fact is "material" if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a); 17 C.F.R. § 240.14a-9.—*Resnik v. Swartz*, 303 F.3d 147.—Sec Reg 49.22(2).

C.A.2 (N.Y.) 2002. For purposes of a securities fraud claim alleging that defendant omitted a material fact in connection with offering to buy or sell securities, an omission is "material" if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available. Securities Exchange Act of 1934, § 10b, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Halperin v. EBanker USA.com, Inc.*, 295 F.3d 352.—Sec Reg 60.28(11).

C.A.2 (N.Y.) 2002. Evidence is "material," such that due process requires prosecution to give such evidence to accused, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a reasonable probability is a probability sufficient to undermine confidence in the outcome, and question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. U.S.C.A. Const.Amend. 14.—*Kennaugh v. Miller*, 289 F.3d 36, certiorari denied 123 S.Ct. 251, 154 L.Ed.2d 187.—Const Law 268(5).

C.A.2 (N.Y.) 2001. New impeachment evidence is not "material," as would require a new trial under the Federal Rules of Criminal Procedure, when the evidence merely furnishes an additional basis on which to impeach a witness whose credibility has already been shown to be questionable. Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.—*U.S. v. Martinez*, 26 Fed.Appx. 40, certiorari denied 122 S.Ct. 1940, 535 U.S. 1068, 152 L.Ed.2d 844.—Crim Law 942(1).

C.A.2 (N.Y.) 2001. Newly discovered evidence is "material," as element for right to new trial, only if it is such that it would create a reasonable doubt that would not otherwise exist, and 'probably' lead to an acquittal. Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.—*U.S. v. Yuzary*, 17 Fed.Appx. 43.—Crim Law 940.

C.A.2 (N.Y.) 2001. Evidence is "material" in the context of *Brady* disclosure obligation only if its suppression undermines confidence in the outcome of the trial. U.S.C.A. Const.Amend. 5, 14.—*In re U.S.*, 267 F.3d 132.—Crim Law 700(2.1).

C.A.2 (N.Y.) 2001. For evidence to be "material" in the context of claim that government violated its *Brady* disclosure obligations, defendant does not need to show that the evidence, if disclosed, would have resulted in his acquittal; rather, he needs to show only that the evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.—*U.S. v.*

Schwarz, 259 F.3d 59, on remand *U.S. v. Bruder*, 2001 WL 1328461.—Crim Law 700(2.1).

C.A.2 (N.Y.) 2001. For undisclosed fact to be "material" for purposes of § 10(b) and Rule 10b-5, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.—*Castellano v. Young & Rubicam, Inc.*, 257 F.3d 171.—Sec Reg 60.28(11).

C.A.2 (N.Y.) 2000. An issue of fact is "material," precluding summary judgment, if it might affect the outcome of the suit under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Konikoff v. Prudential Ins. Co. of America*, 234 F.3d 92.—Fed Civ Proc 2470.1.

C.A.2 (N.Y.) 2000. Omission of information is "material," as required for Rule 10b-5 claim, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available; "total mix of information" may include data sent to shareholders by company in addition to its proxy materials, as well as other information reasonably available to shareholders. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Press v. Quick & Reilly, Inc.*, 218 F.3d 121.—Sec Reg 60.28(11).

C.A.2 (N.Y.) 2000. Evidence is "material," for *Brady* purposes, if it could reasonably be taken to put whole case in such a different light as to undermine confidence in verdict.—*U.S. v. Middlemiss*, 217 F.3d 112.—Crim Law 700(2.1).

C.A.2 (N.Y.) 2000. For purposes of *Brady* claim that government improperly suppressed evidence, evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*U.S. v. Zichettello*, 208 F.3d 72, certiorari denied *Lysaght v. U.S.*, 121 S.Ct. 1077, 531 U.S. 1143, 148 L.Ed.2d 954.—Crim Law 700(2.1).

C.A.2 (N.Y.) 1999. Under New York law, a misrepresentation in an application is "material" only if the insurer would not have written the policy had the facts at issue been disclosed.—*First Financial Ins. Co. v. Allstate Interior Demolition Corp.*, 193 F.3d 109.—Insurance 2958.

C.A.2 (N.Y.) 1999. Under New Jersey insurance law, a misrepresentation is "material" if it is reasonably related to the estimation of the risk or the assessment of the premium.—*In re Payroll Express Corp.*, 186 F.3d 196, certiorari denied *Pereira v. Aetna Casualty & Surety Co.*, 120 S.Ct. 1419, 529 U.S. 1019, 146 L.Ed.2d 312.—Insurance 2958.

C.A.2 (N.Y.) 1999. Corporation's president made "material" misrepresentation when he failed to inform insurer that certain employees were embezzling funds from corporation in responding to question on application for employee dishonesty coverage asking for "other information" pertinent

to proposed insurance; omission was related to insurer's assessment of risk involved in covering corporation for employee theft.—*In re Payroll Express Corp.*, 186 F.3d 196, certiorari denied *Pereira v. Aetna Casualty & Surety Co.*, 120 S.Ct. 1419, 529 U.S. 1019, 146 L.Ed.2d 312.—*Insurance* 2999, 3021.

C.A.2 (N.Y.) 1999. The false designation on a customs form of Switzerland as country of origin of an antique Sicilian gold platter's was "material," for purposes of the statute prohibiting the making of false statements in the course of importing merchandise into the United States, thus subjecting the platter to forfeiture; Customs Directive advised officials to determine whether property was subject to a claim of foreign ownership, and to notify the Office of Enforcement if they were unsure of a nation's patrimony laws, such that a reasonable official should have viewed the platter's true country of origin as highly significant. 18 U.S.C.A. §§ 542, 545; Tariff Act of 1930, § 596(c), as amended, 19 U.S.C.A. § 1595a(c).—*U.S. v. An Antique Platter of Gold*, 184 F.3d 131, certiorari denied *Steinhardt v. U.S.*, 120 S.Ct. 978, 528 U.S. 1136, 145 L.Ed.2d 929.—*Cust Dut* 123.

C.A.2 (N.Y.) 1999. False statement is "material," for purposes of the statute prohibiting the making of false statements in the course of importing merchandise into the United States, if it has the potential significantly to affect the integrity or operation of the importation process as a whole, and neither actual causation nor harm to the government need be demonstrated; this test of materiality applies not only to the decision to admit an item but also decisions as to processing, e.g., expediting importation. 18 U.S.C.A. § 542.—*U.S. v. An Antique Platter of Gold*, 184 F.3d 131, certiorari denied *Steinhardt v. U.S.*, 120 S.Ct. 978, 528 U.S. 1136, 145 L.Ed.2d 929.—*Cust Dut* 123.

C.A.2 (N.Y.) 1999. Fact is "material" for purposes of rule prohibiting inclusion of false or misleading statements of material facts in proxy statement, if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a); 17 C.F.R. § 240.14a-9(a).—*Koppel v. 4987 Corp.*, 167 F.3d 125, on remand 1999 WL 608783, affirmed *Greenberg v. Malkin*, 39 Fed.Appx. 633.—*Sec Reg* 49.26(3).

C.A.2 (N.Y.) 1999. In the context of withdrawal of a guilty plea because of newly disclosed Government information, evidence is considered "material" where there is a reasonable probability that but for the failure to produce such information the defendant would not have entered the plea but instead would have insisted on going to trial. Fed. Rules Cr.Proc.Rule 32(e), 18 U.S.C.A.—*U.S. v. Persico*, 164 F.3d 796, certiorari denied *Fusco v. U.S.*, 119 S.Ct. 2401, 527 U.S. 1039, 144 L.Ed.2d 800, certiorari denied 120 S.Ct. 171, 528 U.S. 870, 145 L.Ed.2d 145.—*Crim Law* 274(3.1).

C.A.2 (N.Y.) 1998. Information is "material" under § 10(b) if there is substantial likelihood that reasonable investor would consider it important in

deciding how to invest. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*S.E.C. v. Warde*, 151 F.3d 42.—*Sec Reg* 60.28(11), 60.46.

C.A.2 (N.Y.) 1998. For purpose of federal bank fraud statute, misrepresentation is "material" if it is capable of influencing bank's actions. 18 U.S.C.A. § 1344.—*U.S. v. Rodriguez*, 140 F.3d 163.—*Banks* 509.10.

C.A.2 (N.Y.) 1997. For information to be "material" under securities fraud provisions, there must be substantial likelihood that reasonable investor would view it as significantly altering the "total mix" of information available, with inquiry guided both by probability that event will occur and anticipated magnitude of event relative to totality of the company's activity. Securities Act of 1933, § 10(b), 15 U.S.C.A. § 77j; 17 C.F.R. § 240.10b-5.—*U.S. v. Cusimano*, 123 F.3d 83, certiorari denied *Flanagan v. U.S.*, 118 S.Ct. 1090, 522 U.S. 1133, 140 L.Ed.2d 146.—*Sec Reg* 60.46.

C.A.2 (N.Y.) 1997. New trial is warranted for *Brady* violation only where defendant can establish that government failed to disclose favorable evidence, including favorable impeachment evidence, and that evidence was material; evidence is "material" only if there is reasonable probability that had evidence been disclosed, result would have been different.—*U.S. v. Gonzalez*, 110 F.3d 936.—*Crim Law* 919(1).

C.A.2 (N.Y.) 1997. False declaration before grand jury is "material" within meaning of perjury statute if it has natural effect or tendency to influence, impede, or dissuade grand jury from pursuing its investigation. 18 U.S.C.A. § 1623(a).—*U.S. v. Regan*, 103 F.3d 1072, certiorari denied 117 S.Ct. 2484, 521 U.S. 1106, 138 L.Ed.2d 992.—*Perj* 11(7).

C.A.2 (N.Y.) 1997. Statement in grand jury proceedings is "material" within meaning of perjury statute if truthful answer could conceivably have aided grand jury investigation. 18 U.S.C.A. § 1623(a).—*U.S. v. Regan*, 103 F.3d 1072, certiorari denied 117 S.Ct. 2484, 521 U.S. 1106, 138 L.Ed.2d 992.—*Perj* 11(7).

C.A.2 (N.Y.) 1996. In context of offense of making false statement, false statement is "material" if it has natural tendency to influence or be capable of affecting government's action. 18 U.S.C.A. § 1001.—*U.S. v. Ballistrea*, 101 F.3d 827, certiorari denied 117 S.Ct. 1327, 520 U.S. 1150, 137 L.Ed.2d 488.—*Fraud* 68.10(4).

C.A.2 (N.Y.) 1996. Under District of Columbia law, breach of contract is "material" if promisee receives something substantially less or different from that for which he bargained.—*Bernard v. Las Americas Communications, Inc.*, 84 F.3d 103.—*Contracts* 317.

C.A.2 (N.Y.) 1995. State Attorney General's objections to borrower's condominium conversion plan were not "material" to participating bank's decision to join in loan agreement, for purposes of determining whether lead bank's failure to disclose such objections warranted rescission of partic-

ipation agreement, where such objections were resolved in relatively short period of time and did not reflect on borrower's character or capacity.—*Banque Arabe et Internationale D'Investissement v. Maryland Nat. Bank*, 57 F.3d 146.—*Contracts* 94(2).

C.A.2 (N.Y.) 1994. Fact is to be considered "material," for purposes of securities fraud claim, if there is substantial likelihood that reasonable person would consider it important in deciding whether to buy or sell shares of stock. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Azzielli v. Cohen Law Offices*, 21 F.3d 512.—*Sec Reg* 60.27(1), 60.28(11).

C.A.2 (N.Y.) 1993. For purposes of rule prohibiting inclusion in proxy statement of any statement that is false or misleading with respect to any material fact, fact is "material" if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—*United Paperworkers Intern. Union v. International Paper Co.*, 985 F.2d 1190, 128 A.L.R. Fed. 731.—*Sec Reg* 49.22(2).

C.A.2 (N.Y.) 1992. Under New York law, fact is "material" so as to void ab initio an insurance contract if, had it been revealed, insurer or reinsurer would either not have issued policy or would have done so only at higher premium.—*Christiania General Ins. Corp. of New York v. Great American Ins. Co.*, 979 F.2d 268.—*Insurance* 2958, 3618.

C.A.2 (N.Y.) 1991. Defendant's false statement to his probation officer that he had no prior record, when in fact he had been arrested and convicted six times previously, was "material" for purpose of sentencing guideline authorizing two-level enhancement for willfully impeding or obstructing administration of justice. U.S.S.G. §§ 3C1.1, 3C1.1, comment. (nn.1, 5), 18 U.S.C.A.App.—*U.S. v. Rodriguez*, 943 F.2d 215.—*Sent & Pun* 761.

C.A.2 (N.Y.) 1990. Liability under rule prohibiting false or misleading proxy statements requires omission of a "material fact" which renders the proxy statement false or misleading; omitted or concealed fact is "material" when there is a substantial likelihood that reasonable shareholder would consider it important in deciding how to vote; if reasonable shareholder would have viewed disclosure of omitted fact as having significantly altered the total mix of information made available, the fact is material. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—*Mendell v. Greenberg*, 927 F.2d 667, opinion amended 938 F.2d 1528.—*Sec Reg* 49.22(2).

C.A.2 (N.Y.) 1985. Maritime insurance principle of uberrimae fidei does not require voiding of the contract unless the undisclosed facts were material and relied on; fact is not "material" unless it is something which could have controlled the underwriter's decision.—*Puritan Ins. Co. v. Eagle S.S. Co. S.A.*, 779 F.2d 866.—*Insurance* 2996.

C.A.2 (N.Y.) 1984. Fraudulent allocation of income to taxpayer's wife on joint personal returns

and fraudulent description of corporation's payment of its owners' personal expenses as business expenses were "material" false statements for purposes of statute prohibiting filing false returns where, despite argument that the misstatements resulted in minimal underpayment of taxes, the distortions in income had potential for hindering efforts to monitor and verify tax liability of the corporation and the taxpayer. 26 U.S.C.A. § 7206(1).—*U.S. v. Greenberg*, 735 F.2d 29.—*Int Rev* 5263.30.

C.A.2 (N.Y.) 1984. Facts omitted from a search warrant affidavit are not "material" unless they cast doubt on existence of probable cause and the omitted information and the information in the affidavit must be considered as a whole in determining if probable cause continues to exist. Fed.Rules Cr. Proc.Rule 41(c), 18 U.S.C.A.—*U.S. v. Marin-Buitrago*, 734 F.2d 889.—*Searches* 112.

C.A.2 (N.Y.) 1982. False statements are "material" under perjury statute only if they bear on issues under investigation by the grand jury and a witness' answers are "material" if truthful answers to the grand jury's questions would assist inquiry while false responses would likely hinder it. 18 U.S.C.A. § 1623.—*U.S. v. LeRoy*, 687 F.2d 610, certiorari denied 103 S.Ct. 823, 459 U.S. 1174, 74 L.Ed.2d 1019.—*Perj* 11(7).

C.A.2 (N.Y.) 1979. A fact omitted from a tender offer is "material" within prohibitions of Securities Exchange Act of 1934 and regulations promulgated pursuant thereto if there is a substantial likelihood that disclosure of omitted fact would have assumed actual significance in deliberations of a reasonable shareholder. Securities Exchange Act of 1934, § 14(d)(1), (e) as amended 15 U.S.C.A. § 78n(d)(1), (e).—*Prudent Real Estate Trust v. Johncamp Realty, Inc.*, 599 F.2d 1140.—*Sec Reg* 52.39(3).

C.A.2 (N.Y.) 1976. A "material" breach of contract is one which would justify other party in suspending his own performance, or a breach which is so substantial as to defeat the purpose of the entire transaction.—*Lipsky v. Commonwealth United Corp.*, 551 F.2d 887.—*Contracts* 261(2).

C.A.2 (N.Y.) 1972. A misstatement of fact does not need to be dispositive of inquiry in question to be "material" within statute making a person guilty of perjury when he subscribes on oath to any material matter which he does not believe to be true; rather, it must be shown that a truthful answer would have been of sufficient probative importance to inquiry so that, as a minimum, further fruitful investigation would have occurred. 18 U.S.C.A. § 1621.—*U.S. v. Birrell*, 470 F.2d 113.—*Perj* 11(2).

C.A.2 (N.Y.) 1972. To establish that an alleged misrepresentation was "material" plaintiff must establish not only that he acted upon the fact misrepresented but that a reasonable man would also have acted upon such fact.—*Dopp v. Franklin Nat. Bank*, 461 F.2d 873, on remand 374 F.Supp. 904.—*Fraud* 50.

C.A.2 (N.Y.) 1958. Where, at time seller of tires delivered tires for heavy earth movers to contractor, which had a contract with the United States for excavation work, both seller of tires and contractor reasonably expected that tires would be substantially used up by the contractor in the work under the contract, and, though many of the tires were not in fact consumed prior to unexpected work stoppage, there was no attempt by contractor, within constructive knowledge of seller of tires, to build up contractor's permanent capital investment at expense of contractor's surety on bond under the Miller Act, the tires were "material" for prosecution of the work within meaning of the Miller Act and bond, and not "capital equipment," and surety was liable to seller of tires on the bond for the tires. Miller Act, §§ 1-4, 40 U.S.C.A. §§ 270a-270d.—U.S. for Use and Benefit of J. P. Byrne & Co., Inc. v. Fire Association of Philadelphia, 260 F.2d 541.—U.S. 67(11).

C.A.4 (N.C.) 2003. A claim alleging that a state denied the defendant due process by knowingly offering or failing to correct false testimony requires a showing of the falsity and materiality of testimony, and in that context, false testimony is "material" when there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. U.S.C.A. Const.Amend. 14.—Daniels v. Lee, 316 F.3d 477.—Const Law 268(9).

C.A.4 (N.C.) 2000. Defendant's postconviction statement to probation officer charged with preparing the presentence report (PSR), in which defendant denied his guilt and instead implicated his taxpayer clients in scheme to defraud Internal Revenue Service (IRS), was "material," as required to apply obstruction of justice sentencing enhancement, since the statement, if believed, could have affected the sentence ultimately imposed within the guideline range. U.S.S.G. § 3C1.1, comment. (n. 3), 18 U.S.C.A.—U.S. v. Gormley, 201 F.3d 290.—Sent & Pun 761.

C.A.4 (N.C.) 1999. Fact stated or omitted is "material," as required for action under § 10b and Rule 10b-5, if there is substantial likelihood that reasonable purchaser or seller of security (1) would consider fact important in deciding whether to buy or sell the security or (2) would have viewed total mix of information made available to be significantly altered by disclosure of the fact. Securities Act of 1933, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Longman v. Food Lion, Inc., 197 F.3d 675, certiorari denied 120 S.Ct. 1672, 529 U.S. 1067, 146 L.Ed.2d 482.—Sec Reg 60.28(11), 60.46.

C.A.4 (N.C.) 1998. Defendant was not deprived of "material" information when prosecutor withheld or attempted to conceal certain evidence from defense, in that it was not reasonably probable that evidence's introduction would have produced different verdict in light of overwhelming evidence of guilt, and therefore prosecution's improper conduct did not violate defendant's due process rights. U.S.C.A. Const.Amend. 14.—Brown v. French, 147 F.3d 307, certiorari denied 119 S.Ct. 559, 525 U.S.

1025, 142 L.Ed.2d 465.—Const Law 268(5); Crim Law 700(3).

C.A.4 (N.C.) 1998. For purposes of due process claim based on government's withholding of material, exculpatory evidence, evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 5, 14.—Brown v. French, 147 F.3d 307, certiorari denied 119 S.Ct. 559, 525 U.S. 1025, 142 L.Ed.2d 465.—Const Law 268(5).

C.A.4 (N.C.) 1996. Evidence withheld by government is "material," as would require reversal of conviction, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Trevino, 89 F.3d 187.—Crim Law 700(2.1), 1166(10.10).

C.A.4 (N.C.) 1991. Evidence is "material," for purposes of *Brady* claim, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different and "reasonable probability" is probability sufficient to undermine confidence in outcome.—Maynard v. Dixon, 943 F.2d 407, certiorari denied 112 S.Ct. 1211, 502 U.S. 1110, 117 L.Ed.2d 450.—Crim Law 700(2.1).

C.A.8 (N.D.) 1992. For false oath or account to bar Chapter 7 discharge, such false statement must be "material," i.e., must bear relationship to debtor's business transactions or estate, or concern discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—Mertz v. Rott, 955 F.2d 596.—Bankr 3282.1.

C.A.8 (N.D.) 1992. "Material" matters, within meaning of bankruptcy criminal fraud statute, include not only those pertinent to nature and extent of bankrupt's assets, but also include those pertinent to his financial transactions; moreover, statements designed to secure adjudication by particular bankruptcy court are also material. 18 U.S.C.A. § 152.—U.S. v. Yagow, 953 F.2d 427, certiorari denied 113 S.Ct. 103, 506 U.S. 833, 121 L.Ed.2d 62.—Bankr 3861.

C.A.6 (Ohio) 2001. For purpose of provision of Social Security Act allowing remand of social security disability case for consideration of new and material evidence, such evidence is "material" only if there is a reasonable probability that the Secretary would have reached a different disposition of the disability claim if presented with the new evidence. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—Foster v. Halter, 279 F.3d 348, 2002 Fed.App. 44P.—Social S 149.

C.A.6 (Ohio) 2001. Whether it takes form of exculpatory or impeachment evidence, evidence which is favorable to defendant may also be regarded as "material," so that constitutional error will result from its suppression, where there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; in this context, "reasonable probability"

of different result is shown when government's evidentiary suppression undermines confidence in outcome of trial.—*U.S. v. Ross*, 245 F.3d 577, 2001 Fed.App. 89P.—Crim Law 700(2.1).

C.A.6 (Ohio) 2001. Government's failure to learn of \$2,000 preparation payment for tax documents introduced at defendant's trial, and to disclose the same to defendant, did not rise to "material" level under *Brady*; payment was made simply to secure documentary evidence, not to influence any witness' testimony.—*U.S. v. Ross*, 245 F.3d 577, 2001 Fed.App. 89P.—Crim Law 700(4).

C.A.6 (Ohio) 2000. In state criminal proceedings, the prosecution is obligated under the Due Process Clause of the Fourteenth Amendment to disclose evidence that is favorable to the accused and material to guilt or punishment, and evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—*McMeans v. Brigano*, 228 F.3d 674, 2000 Fed.App. 353P, rehearing and suggestion for rehearing denied, certiorari denied 121 S.Ct. 1487, 532 U.S. 958, 149 L.Ed.2d 374.—Const Law 268(5).

C.A.6 (Ohio) 2000. Only disputes over facts that might affect the outcome of the suit under the governing law are "material," so as to properly preclude the entry of summary judgment.—*Boyd v. Baeppler*, 215 F.3d 594, 2000 Fed.App. 188P, rehearing and suggestion for rehearing denied.—Fed Civ Proc 2470.1.

C.A.6 (Ohio) 2000. Given extensive impeachment information elicited during defendant's cross-examination, witness' allegedly false testimony that he had no pending charges against him at time of defendant's trial was not "material," as required to support claim of prosecutorial misconduct or denial of due process based on state's alleged knowing use of witness' false or perjured testimony, even though witness faced parole revocation proceedings following completion of workhouse sentence he was then serving. U.S.C.A. Const.Amend. 14.—*Byrd v. Collins*, 209 F.3d 486, 2000 Fed.App. 121P, rehearing en banc denied 227 F.3d 756, certiorari denied 121 S.Ct. 786, 531 U.S. 1082, 148 L.Ed.2d 682, rehearing denied 121 S.Ct. 1176, 531 U.S. 1186, 148 L.Ed.2d 1034.—Const Law 268(9); Crim Law 706(2).

C.A.6 (Ohio) 1998. Required certification on initial loan application forms that defendant, as loan originator, had face-to-face interviewer with potential borrowers was "material," for purposes of statute proscribing making of false statement in matter within jurisdiction of federal agency, even though forms were submitted to lending institutions and not generally received by Department of Housing and Urban Development (HUD); HUD relied on lender having obtained required information for its insured loans, and thus certification had natural tendency to influence HUD. 18 U.S.C.(1994 Ed.) § 1001.—*U.S. v. Lutz*, 154 F.3d 581, 1998 Fed.App. 263P.—Fraud 68.10(4).

C.A.6 (Ohio) 1998. Statement is "material" for purposes of statute proscribing making of false statement in matter within jurisdiction of federal agency if statement has the natural tendency to influence or is capable of influencing the federal agency; it is not necessary to show that the statement actually influenced an agency, but only that it had the capacity to do so. 18 U.S.C.(1994 Ed.) § 1001.—*U.S. v. Lutz*, 154 F.3d 581, 1998 Fed.App. 263P.—Fraud 68.10(4).

C.A.6 (Ohio) 1998. Statement is "material," for purposes of statute imposing criminal penalties for making false material statement in matter within jurisdiction of government of United States, if it has natural tendency to influence decision or function within jurisdiction of governmental agency. 18 U.S.C.A. § 1001.—*U.S. v. Dedhia*, 134 F.3d 802, certiorari denied 118 S.Ct. 1844, 523 U.S. 1145, 140 L.Ed.2d 1105.—Fraud 68.10(4).

C.A.6 (Ohio) 1994. Case may be disposed by motion for summary judgment if there is no genuine issue of material fact and moving party is entitled to judgment as matter of law; fact is "material" if it would affect outcome of case, and dispute over material fact is "genuine" if evidence is such that reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Henson v. National Aeronautics and Space Admin.*, 14 F.3d 1143, 1994 Fed.App. 23P, opinion corrected on rehearing 23 F.3d 990.—Fed Civ Proc 2470.1, 2470.4.

C.A.6 (Ohio) 1990. Since Congress specifically required union to disclose amounts it disburses in salary and reimbursement expenses for each employee who received over \$10,000, and form provided union by Department of Labor requires union to separately list amounts given to employee for salary and for reimbursed expenses, false reporting of information specifically required to be disclosed is "material" for purposes of false statements conviction. 18 U.S.C.A. § 1001.—*Hughes v. U.S.*, 899 F.2d 1495, rehearing denied, certiorari denied 111 S.Ct. 508, 498 U.S. 980, 112 L.Ed.2d 520, rehearing denied 111 S.Ct. 1027, 498 U.S. 1116, 112 L.Ed.2d 1109, appeal after remand 964 F.2d 536, rehearing denied, certiorari denied 113 S.Ct. 1254, 507 U.S. 909, 122 L.Ed.2d 653, certiorari denied *Friedman v. U.S.*, 114 S.Ct. 1191, 510 U.S. 1165, 127 L.Ed.2d 541.—Fraud 68.10(4).

C.A.10 (Okla.) 2002. Generally, evidence is "material" in the context of government's *Brady* disclosure obligations if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Knighton v. Mullin*, 293 F.3d 1165, certiorari denied 123 S.Ct. 1588, 155 L.Ed.2d 325.—Crim Law 700(2.1).

C.A.10 (Okla.) 2002. Document summarizing law enforcement officer's recounting of overheard conversation in which capital defendant suggested that he should kill himself, since he was going to die "for this" anyway, was not "material" for purposes of *Brady* disclosure claim, inasmuch as one of defendant's psychiatric experts testified at trial con-

cerning defendant's previous suicide attempts, defendant's girlfriend, to whom statement had been made, had previously testified about defendant's apparent suicide attempts during crime spree in which charged offenses occurred, and similar testimony was offered at trial; document was merely cumulative evidence, and thus added only marginal support to defense.—*Knighon v. Mullin*, 293 F.3d 1165, certiorari denied 123 S.Ct. 1588, 155 L.Ed.2d 325.—Crim Law 700(3).

C.A.10 (Okla.) 2001. A statement or omission is only "material" if a reasonable investor would consider it important in determining whether to buy or sell stock, and if it would have significantly altered the total mix of information available to current and potential investors. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*City of Philadelphia v. Fleming Companies, Inc.*, 264 F.3d 1245.—Sec Reg 60.28(11), 60.46.

C.A.10 (Okla.) 2001. It is the materiality of the excluded evidence to the presentation of the defense that determines whether a petitioner has been deprived of a fundamentally fair trial based on the exclusion of that evidence; evidence is "material" if its suppression might have affected the trial's outcome.—*Mitchell v. Gibson*, 262 F.3d 1036.—*Hab Corp* 492.

C.A.10 (Okla.) 2001. In the context of *Brady* nondisclosure claim, evidence is "material" if there is a reasonable probability that, had the state disclosed the evidence, the result of the trial would have been different.—*Rojem v. Gibson*, 245 F.3d 1130.—Crim Law 700(2.1).

C.A.10 (Okla.) 2001. Although prosecution should have disclosed report of resident who saw headlights on night of murder near location at which murder victim's body was found, given its exculpatory value, report was not "material" and therefore failure to disclose it did not violate government's *Brady* disclosure obligation, in that report did not preclude defendant as suspect or even strongly suggest that someone other than defendant committed offense.—*Rojem v. Gibson*, 245 F.3d 1130.—Crim Law 700(3).

C.A.10 (Okla.) 2000. Suppressed exculpatory evidence is "material," for purposes of establishing a *Brady* violation, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*Van Woudenberg ex rel. Foor v. Gibson*, 211 F.3d 560, certiorari denied 121 S.Ct. 1117, 531 U.S. 1161, 148 L.Ed.2d 985.—Crim Law 700(2.1).

C.A.10 (Okla.) 1999. Suppressed exculpatory evidence will be deemed "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*Moore v. Gibson*, 195 F.3d 1152, certiorari denied 120 S.Ct.

2206, 530 U.S. 1208, 147 L.Ed.2d 239.—Crim Law 700(2.1).

C.A.10 (Okla.) 1998. To be "material" under perjury statute, false statement must have natural tendency to influence, or be capable of influencing, decision required to be made. 18 U.S.C.A. § 1623(a).—*U.S. v. Durham*, 139 F.3d 1325, certiorari denied 119 S.Ct. 158, 525 U.S. 866, 142 L.Ed.2d 130, certiorari denied *Evans v. U.S.*, 119 S.Ct. 158, 525 U.S. 866, 142 L.Ed.2d 130.—Perj 11(2).

C.A.10 (Okla.) 1998. Materiality requirement governing prosecution's duty to disclose exculpatory evidence is met only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; in other words, evidence is "material" when government's evidentiary suppression undermines confidence in outcome of trial.—*Duvall v. Reynolds*, 139 F.3d 768, certiorari denied 119 S.Ct. 345, 525 U.S. 933, 142 L.Ed.2d 284.—Crim Law 700(2.1).

C.A.10 (Okla.) 1997. On motion for summary judgment, disputed fact is "material" if it might affect outcome of suit under governing law, and dispute is "genuine" if evidence is such that reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Allen v. Muskogee, Okl.*, 119 F.3d 837, certiorari denied *Smith v. Allen*, 118 S.Ct. 1165, 522 U.S. 1148, 140 L.Ed.2d 176, certiorari denied *City of Muskogee v. Allen*, 118 S.Ct. 1165, 522 U.S. 1148, 140 L.Ed.2d 176.—Fed Civ Proc 2470.1.

C.A.10 (Okla.) 1995. Withheld evidence is "material" for purposes of determining whether reversal of conviction is required following prosecution's withholding of evidence, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Banks v. Reynolds*, 54 F.3d 1508.—Crim Law 1171.1(1).

C.A.10 (Okla.) 1994. Evidence favorable to defendant is "material" so that its nondisclosure would constitute a deprivation of defendant's due process rights, only if there is reasonable probability that, had evidence been disclosed to defense, results of proceeding would have been different, and "reasonable probability" is probability sufficient to undermine confidence in outcome. U.S.C.A. Const. Amend. 5.—*U.S. v. Wright*, 43 F.3d 491.—Const Law 268(5).

C.A.10 (Okla.) 1992. Evidence which is suppressed by prosecution is deemed "material" and suppression violates due process if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 5, 14.—*U.S. v. Thornbrugh*, 962 F.2d 1438, on rehearing *U.S. v. Abreu*, 962 F.2d 1447, certiorari granted, vacated 113 S.Ct. 2405, 508 U.S. 935, 124 L.Ed.2d 630, on remand 997 F.2d 825, on rehearing 7 F.3d 1471, appeal after remand 52 F.3d 339, appeal from denial of post-conviction relief dismissed 194 F.3d 1321, certiorari denied 114 S.Ct. 2748, 512 U.S. 1239, 129 L.Ed.2d 866, appeal after remand 7 F.3d

1046, certiorari denied 113 S.Ct. 220, 506 U.S. 877, 121 L.Ed.2d 158, certiorari granted, vacated 113 S.—Const Law 268(5); Crim Law 700(2.1).

C.A.10 (Okla.) 1991. False statements made by supervisor of wastewater treatment plant, at defendant's direction, regarding plant's pollution discharge monitoring reports were "material" in that statements had tendency to influence or were capable of influencing EPA enforcement action. 18 U.S.C.A. § 1001.—U.S. v. Brittain, 931 F.2d 1413.—Fraud 68.10(4).

C.A.9 (Or.) 2000. In the context of claim that prosecution's suppression of evidence violated due process, evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const. Amends. 5, 14.—Downs v. Hoyt, 232 F.3d 1031, certiorari denied 121 S.Ct. 1665, 532 U.S. 999, 149 L.Ed.2d 646.—Const Law 268(5).

C.A.9 (Or.) 1993. For purposes of prosecutor's obligation to disclose material exculpatory information in its possession to defense, the evidence is "material" only if there was a reasonable probability that evidence would have changed result of proceeding if evidence was disclosed.—Hendricks v. Zenon, 993 F.2d 664.—Crim Law 700(2.1).

C.A.3 (Pa.) 2002. Negative report for fingerprint test conducted on plastic bags of crack cocaine was not "material" evidence in the context of *Brady* challenge to government's failure to disclose report, inasmuch as it was not likely that evidence of lack of fingerprints on bags, while perhaps helpful to defendant, would have led to different verdict on charge alleging possession with intent to distribute crack cocaine; ample other evidence showed that defendant lived in apartment from which bags were seized, and negative fingerprint analysis indicated only that there were not fingerprints showing that defendant handled bags, not that he had never handled bags. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C.A. § 841(a)(1).—U.S. v. Fisher, 43 Fed. Appx. 507.—Crim Law 700(3).

C.A.3 (Pa.) 2002. Factual dispute is "material" for summary judgment purposes if it bears on an essential element of the plaintiff's claim, and is "genuine" if a reasonable jury could find in favor of the nonmoving party. Fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A.—Fakete v. Aetna, Inc., 308 F.3d 335.—Fed Civ Proc 2470.1.

C.A.3 (Pa.) 2002. A misrepresented fact in an insurance application is "material" if being disclosed to the insurer it would have caused it to refuse the risk altogether or to demand a higher premium.—Burkert v. Equitable Life Assur. Soc. of America, 287 F.3d 293.—Insurance 2958.

C.A.3 (Pa.) 2000. The question of materiality for purposes of a securities fraud action is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor; an omitted fact is "material" if there is a substantial likelihood that a reasonable investor would consider

it important in deciding how to act. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Ieradi v. Mylan Laboratories, Inc., 230 F.3d 594.—Sec Reg 60.28(11), 60.46.

C.A.3 (Pa.) 1999. An ERISA fiduciary may not materially mislead those to whom the duties of loyalty and prudence are owed, and a misrepresentation is "material" if there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed retirement decision. Employee Retirement Income Security Act of 1974, § 404(a)(1), 29 U.S.C.A. § 1104(a)(1).—International Union, United Auto., Aerospace & Agr. Implement Workers of America, U.A.W. v. Skinner Engine Co., 188 F.3d 130.—Pensions 47.

C.A.3 (Pa.) 1999. A fact omitted from a registration statement or prospectus is "material," under securities statutes, if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to act. Securities Act of 1933, § 11, 12(a)(2), 15 U.S.C.A. §§ 77k, 77l(a)(2).—Klein v. General Nutrition Companies, Inc., 186 F.3d 338.—Sec Reg 25.21(3), 25.62(4).

C.A.3 (Pa.) 1999. Claims of securities fraud under § 10(b) and Rule 10-5 require a showing of materiality, and an omitted fact is "material" if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to proceed. Securities Exchange Act of 1934, § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.—Klein v. General Nutrition Companies, Inc., 186 F.3d 338.—Sec Reg 60.28(11).

C.A.3 (Pa.) 1996. For purposes of ERISA fiduciary's duty to disclose material misrepresentations made by fiduciaries to participants regarding risks attendant to fund investment, misrepresentation is "material" if there is substantial likelihood that it would mislead reasonable participant in making adequately informed decision about whether to place or maintain monies in funds. Employee Retirement Income Security Act of 1974, § 404(a), as amended, 29 U.S.C.A. § 1104(a).—In re Unisys Sav. Plan Litigation, 74 F.3d 420, rehearing denied, certiorari denied Unisys Corp. v. Meinhardt, 117 S.Ct. 56, 519 U.S. 810, 136 L.Ed.2d 19, on remand 1997 WL 158127.—Pensions 47.

C.A.3 (Pa.) 1995. Evidence of grand jury investigation was not "material," so its nondisclosure could not be *Brady* violation, though defendant contended that undisclosed evidence could have led jury to conclude that witness' testimony was designed to further his own interests in connection with ongoing grand jury investigation, where witness was unaware of ongoing nature of investigation and never asked government to intercede on his behalf in connection with any such investigation.—U.S. v. Veksler, 62 F.3d 544, certiorari denied McNaughton v. U.S., 116 S.Ct. 780, 516 U.S. 1075, 133 L.Ed.2d 731, post-conviction relief denied 3 F.Supp.2d 592, reconsideration denied.—Crim Law 700(4).

C.A.3 (Pa.) 1995. Evidence is "material," for purposes of prosecution's disclosure obligation under *Brady*, only if there is reasonable probability

that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome.—U.S. v. Veksler, 62 F.3d 544, certiorari denied *McNaughton v. U.S.*, 116 S.Ct. 780, 516 U.S. 1075, 133 L.Ed.2d 731, post-conviction relief denied 3 F.Supp.2d 592, reconsideration denied.—Crim Law 700(2.1).

C.A.3 (Pa.) 1995. For purposes of exception to discharge for making false financial statements, materiality prong of "material falsehood" test refers to creditor's reliance upon false statement in sense that untruth can be considered important or "material" if it influences creditor's decision to extend credit; however, statement can still be material if it is so substantial that reasonable person would have relied upon it, even if creditor did not in fact rely upon it in case at hand. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B)(i).—*In re Cohn*, 54 F.3d 1108.—Bankr 3353(12.15).

C.A.3 (Pa.) 1994. For purposes of summary judgment motion, fact is "material" when it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Connors v. Fawn Min. Corp.*, 30 F.3d 483.—Fed Civ Proc 2470.1.

C.A.3 (Pa.) 1993. In determining whether employer breached fiduciary duty under ERISA by making affirmative misrepresentations on topic of early retirement, misrepresentation was "material" if there was substantial likelihood that it would mislead reasonable employee in making an adequately informed decision about if and when to retire. Employee Retirement Income Security Act of 1974, § 404(a)(1), 29 U.S.C.A. § 1104(a)(1).—*Fischer v. Philadelphia Elec. Co.*, 994 F.2d 130, rehearing denied, certiorari denied 114 S.Ct. 622, 510 U.S. 1020, 126 L.Ed.2d 586, on remand 1994 WL 194836, motion denied 1995 WL 286544, vacated in part 1995 WL 510300, reversed 96 F.3d 1533, certiorari denied 117 S.Ct. 1247, 520 U.S. 1116, 137 L.Ed.2d 329, reversed *Kurz v. Philadelphia Elec. Co.*, 96 F.3d 1544, rehearing denied 113 F.3d 432, certiorari denied 118 S.Ct. 297, 522 U.S. 913, 139 L.Ed.2d 228.—Pensions 47.

C.A.3 (Pa.) 1991. Information is "material" under securities fraud statute if there is substantial likelihood that, under all the circumstances, information would have assumed actual significance in deliberations of reasonable shareholder. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Lewis v. Chrysler Corp.*, 949 F.2d 644.—Sec Reg 60.28(11).

C.A.3 (Pa.) 1990. Under statute that prohibits introducing or attempting to introduce imported merchandise into United States commerce by means of false statements, false statement is "material" not only if it is calculated to effect impermissible introduction of ineligible or restricted goods, but also if it affects or facilitates importation process in any other way. 18 U.S.C.A. § 542.—*U.S. v. Bagnall*, 907 F.2d 432, rehearing denied.—Cust Dut 125.

C.A.3 (Pa.) 1984. If exculpatory evidence creates reasonable doubt as to defendant's culpability, it is "material" within purview of *Brady* rule requiring disclosure by government of certain evidence.—*U.S. v. Starusko*, 729 F.2d 256.—Crim Law 627.6(1).

C.A.3 (Pa.) 1973. Fact is "material" within Securities Act prohibiting offering or selling security in interstate commerce by means of prospectus or oral communication containing an untrue statement or material omission if it concerns information about which an average prudent investor ought reasonably to be informed before buying security or if its existence or nonexistence is matter to which reasonable man would attach importance in determining his choice of action in transaction in question. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l(2).—*Kubik v. Goldfield*, 479 F.2d 472.—Sec Reg 27.42.

C.A.1 (Puerto Rico) 1999. In order to succeed on a *Brady* claim, a defendant must show that withheld evidence was exculpatory, as measured by its materiality, and information is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, while a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*U.S. v. Rosario-Peralta*, 175 F.3d 48, opinion after remand 199 F.3d 552, certiorari denied *Antonio Javier v. U.S.*, 121 S.Ct. 241, 531 U.S. 902, 148 L.Ed.2d 174, post-conviction relief dismissed by 2002 WL 878890, post-conviction relief dismissed by U.S. v. Morla, 2002 WL 879437.—Crim Law 700(2.1).

C.A.1 (Puerto Rico) 1994. Fact is "material" for summary judgment purposes when it has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Marrero-Garcia v. Irizarry*, 33 F.3d 117.—Fed Civ Proc 2470.1.

C.A.1 (Puerto Rico) 1992. In context of summary judgment, "genuine" issue means that evidence about the fact is such that reasonable party could resolve point in favor of nonmoving party, and "material" means that fact is one susceptible of altering outcome of litigation. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Rivera-Muriente v. Agosto-Alicea*, 959 F.2d 349.—Fed Civ Proc 2470.1.

C.A.1 (Puerto Rico) 1992. Only those disputes over facts that might affect outcome of case under applicable law are considered "material" for summary judgment purposes. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Aponte-Santiago v. Lopez-Rivera*, 957 F.2d 40.—Fed Civ Proc 2470.1.

C.A.1 (Puerto Rico) 1987. If statement could have provoked agency action, it is "material" within statute proscribing false statements or entries, whether or not ever relied on. 18 U.S.C.A. § 1001.—*U.S. v. Corsino*, 812 F.2d 26.—Fraud 68.10(4).

C.A.1 (R.I.) 1997. Even where it is undisputed that "missing evidence" exists, defendant has burden to show that evidence is "material," that is, that

there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Marshall, 109 F.3d 94.—Crim Law 700(9).

C.A.1 (R.I.) 1996. *Brady* error occurs when government suppresses “material” information that is favorable to defense; information is “material” if there is a reasonable probability that, had the evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Blais, 98 F.3d 647, certiorari denied 117 S.Ct. 1000, 519 U.S. 1134, 136 L.Ed.2d 879.—Crim Law 700(2.1).

C.A.1 (R.I.) 1996. Materiality requirement for allegedly false statement which would support sentence enhancement for obstruction of justice is not stringent; statement is “material” which, if believed, would tend to influence or affect issue under determination. U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Kelley, 76 F.3d 436.—Sent & Pun 761.

C.A.1 (R.I.) 1996. False statement may be “material” for purposes of enhancing sentence for obstruction of justice if falsehood is designed to mitigate significantly the wrongful conduct and so affect court’s exercise of discretion in choosing sentence within range. U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Kelley, 76 F.3d 436.—Sent & Pun 761.

C.A.1 (R.I.) 1992. Fact is “material” so that issue about that fact precludes summary judgment if fact is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—U.S. v. One Parcel of Real Property With Bldgs., Appurtenances, and Improvements, Known as Plat 20, Lot 17, Great Harbor Neck, New Shoreham, R.I., 960 F.2d 200.—Fed Civ Proc 2470.1.

C.A.1 (R.I.) 1986. Where jewelry policy insured got cash for jewelry purchases was “material” to his claim for theft of jewelry, so that knowingly false misrepresentation would void policy, where insured insisted that he paid jeweler total of \$233,000 in cash over 30-month period for the jewelry, the credibility of insured’s ownership of insured items turned in part on his ability to explain plausibly where he obtained such large sums of cash, and insured had reported his income in federal tax return as \$3000 in year in which he allegedly purchased 12 jewelry items for a total of \$90,000 in cash.—*Dadurian v. Underwriters At Lloyd’s, London*, 787 F.2d 756.—Insurance 3017.

C.A.1 (R.I.) 1985. Statement is “material” within meaning of perjury statute [18 U.S.C.A. § 1623(a)] if it is capable of influencing tribunal on issue before it; it need not be material to any particular issue in case, but rather may be material to any proper matter of jury’s inquiry, including issue of credibility.—U.S. v. Scivola, 766 F.2d 37.—Perj 11(8), 11(9).

C.A.1 (R.I.) 1985. Defendant’s testimony in his stolen-property trial regarding number of stolen chairs he purchased was “material” within meaning of perjury statute [18 U.S.C.A. § 1623(a)], though it was not relevant to issue of whether value of property he purchased satisfied statutory [18

U.S.C.A. § 659] requirements, where defendant’s statement that he received only 35 chairs directly contradicted testimony of several Government witnesses that he had received 100, and was therefore relevant to jury’s consideration of defendant’s credibility.—U.S. v. Scivola, 766 F.2d 37.—Perj 11(9).

C.A.8 (S.D.) 1998. Disputes over facts that might affect the outcome of the lawsuit according to applicable substantive law are “material” for purposes of summary judgment motion.—*Liebe v. Norton*, 157 F.3d 574.—Fed Civ Proc 2470.1.

C.A.8 (S.D.) 1998. Evidence is “material” for *Brady* purposes if its cumulative effect would be to undermine confidence in verdict. U.S.C.A. Const. Amend. 5.—U.S. v. Madrigal, 152 F.3d 777.—Crim Law 700(2.1).

C.A.8 (S.D.) 1997. Misrepresentation or omission is “material,” as required to support claim of securities fraud, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available.—*Parnes v. Gateway 2000, Inc.*, 122 F.3d 539.—Sec Reg 25.21(3), 25.62(4).

C.A.8 (S.D.) 1997. Evidence is “material” for *Brady* purposes if its cumulative effect would be to undermine confidence in the verdict.—U.S. v. Van Brocklin, 115 F.3d 587, certiorari denied *Hastings v. U.S.*, 118 S.Ct. 1804, 523 U.S. 1122, 140 L.Ed.2d 944.—Crim Law 700(2.1).

C.A.8 (S.D.) 1994. Immigration and Naturalization Service (INS) records concerning two roommates of defendants’ brother were not “material” to defense in prosecution of defendants for drug and weapons offenses arising out of presence of package containing opium outside apartment which defendants claimed they had rented for their brother and his two roommates; despite contention that INS records would have proved existence and whereabouts of brother’s roommates, defendants failed to show that either of them would have been acquitted had records been introduced.—U.S. v. Vue, 13 F.3d 1206, appeal after remand 38 F.3d 973.—Crim Law 627.6(6).

C.A.6 (Tenn.) 2002. In the context of offense under statute proscribing filing of false federal tax return, a matter is “material” if it has a natural tendency to influence, or is capable of influencing or affecting, the ability of Internal Revenue Service (IRS) to audit or verify the accuracy of a tax return. 26 U.S.C.A. § 7206(1).—U.S. v. Tarwater, 308 F.3d 494, 2002 Fed.App. 359P, rehearing and suggestion for rehearing denied.—Int Rev 5263.30.

C.A.6 (Tenn.) 2002. In a prosecution under statute proscribing filing of false federal tax return, any failure to report income is “material.” 26 U.S.C.A. § 7206(1).—U.S. v. Tarwater, 308 F.3d 494, 2002 Fed.App. 359P, rehearing and suggestion for rehearing denied.—Int Rev 5263.30.

C.A.6 (Tenn.) 2001. A statement is “material” under false statement statute if it has the natural tendency to influence, or is capable of influencing, the federal agency. 18 U.S.C.A. § 1001.—U.S. v.

Logan, 250 F.3d 350, 2001 Fed.App. 158P, rehearing en banc denied, certiorari denied 122 S.Ct. 216, 534 U.S. 895, 151 L.Ed.2d 154, certiorari denied *Laws v. U.S.*, 122 S.Ct. 468, 534 U.S. 997, 151 L.Ed.2d 384.—*Fraud* 68.10(4).

C.A.6 (Tenn.) 2000. For purposes of *Brady* rule that prosecution disclose material, favorable evidence, evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of proceeding would have been different, with a “reasonable probability” being a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const. Amends. 5, 14.—*Carter v. Bell*, 218 F.3d 581, 2000 Fed.App. 221P.—*Crim Law* 700(2.1).

C.A.6 (Tenn.) 2000. Evidence concerning agreement between cooperating accomplice and state as to whether accomplice would serve time in federal or state prison was not “material,” and thus was not required to be disclosed by state, where evidence of accomplice’s plea agreement was presented at defendant’s capital trial and defense counsel argued elements of agreement to jury during closing arguments at both guilt and penalty phases of trial, asserting that accomplice had saved himself from first-degree murder conviction and death sentence by testifying for state. U.S.C.A. Const.Amend. 14.—*Carter v. Bell*, 218 F.3d 581, 2000 Fed.App. 221P.—*Crim Law* 700(4).

C.A.6 (Tenn.) 1999. Any favorable evidence, regardless of whether defendant has made request for such evidence, is “material” for purposes of motion for new trial based on newly discovered *Brady* evidence if there is reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Schledwitz v. U.S.*, 169 F.3d 1003, 1999 Fed.App. 81P.—*Crim Law* 940.

C.A.6 (Tenn.) 1998. Evidence is “material,” for purposes of principle that suppression by prosecution of evidence favorable to accused violates due process, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a “reasonable probability” for such purpose is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const. Amend. 14.—*Workman v. Bell*, 178 F.3d 759, 1998 Fed.App. 322P, rehearing en banc denied, certiorari denied 120 S.Ct. 264, 528 U.S. 913, 145 L.Ed.2d 221, rehearing denied 120 S.Ct. 573, 528 U.S. 1041, 145 L.Ed.2d 448, motion to reopen denied 227 F.3d 331, 2000 Fed.App. 296P, rehearing en banc denied, and rehearing and suggestion for rehearing denied, certiorari denied 121 S.Ct. 1194, 531 U.S. 1193, 149 L.Ed.2d 109, motion to reopen denied 245 F.3d 849, 2001 Fed.App. 86P, rehearing en banc denied, certiorari de—*Crim Law* 700(2.1).

C.A.6 (Tenn.) 1998. In order to impose a sentencing enhancement for obstruction of justice, a district court must find that a perjurious statement is “material,” that is, that it would tend to influence or affect the issue under determination. U.S.S.G.

§ 3C1.1, 18 U.S.C.A.—*U.S. v. Jones*, 159 F.3d 969, 1998 Fed.App. 331P.—*Sent & Pun* 761.

C.A.6 (Tenn.) 1998. A fact is “material” for purposes of precluding summary judgment if it will affect the outcome of the suit under the governing law, and factual disputes that are irrelevant or unnecessary will not be counted.—*Summar on Behalf of Summar v. Bennett*, 157 F.3d 1054, 1998 Fed.App. 308P.—*Fed Civ Proc* 2470.1.

C.A.6 (Tenn.) 1997. Any favorable evidence, regardless of whether requested or not, is “material” under *Brady* if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*U.S. v. Frost*, 125 F.3d 346, 1997 Fed.App. 274P, rehearing and suggestion for rehearing denied, certiorari denied 119 S.Ct. 40, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Turner v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Potter v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Congo v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Faulkner v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32.—*Crim Law* 700(2.1).

C.A.6 (Tenn.) 1997. Whether evidence is “material” under *Brady* does not depend upon whether defendant would more likely than not have received different verdict with evidence, but whether in its absence he received fair trial, understood as trial resulting in verdict worthy of confidence.—*U.S. v. Frost*, 125 F.3d 346, 1997 Fed.App. 274P, rehearing and suggestion for rehearing denied, certiorari denied 119 S.Ct. 40, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Turner v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Potter v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Congo v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32, certiorari denied *Faulkner v. U.S.*, 119 S.Ct. 41, 525 U.S. 810, 142 L.Ed.2d 32.—*Crim Law* 700(2.1).

C.A.6 (Tenn.) 1997. Drug defendant’s perjurious testimony at codefendant’s trial that defendant dropped his gun in response to officers’ orders before they began to fire at him was “material,” thus warranting imposition of two-level increase in base offense level under Sentencing Guidelines for obstruction of justice; government’s case was premised, in large part, on evidence seized pursuant to search warrant executed by officers, and jury’s belief in defendant’s testimony would have discredited officers and certainly could have influenced outcome of case. U.S.S.G. § 3C1.1, 18 U.S.C.A.—*U.S. v. Walker*, 119 F.3d 403, 1997 Fed.App. 206P, rehearing and suggestion for rehearing denied, opinion supplemented 121 F.3d 710, certiorari denied 118 S.Ct. 643, 522 U.S. 1036, 139 L.Ed.2d 621, certiorari denied 118 S.Ct. 643, 522 U.S. 1036, 139 L.Ed.2d 621.—*Sent & Pun* 761.

C.A.6 (Tenn.) 1991. Not every factual dispute will preclude summary judgment; fact in dispute must be “material” in that it could potentially affect the outcome. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Murphy*, 937 F.2d 1032.—*Fed Civ Proc* 2470.1.

C.A.6 (Tenn.) 1987. Not every factual dispute between the parties will prevent summary judgment; disputed facts must be “material” and must be facts which, under the substantive law governing the issue, might affect the outcome of the suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—60 Ivy Street Corp. v. Alexander, 822 F.2d 1432.—Fed Civ Proc 2470.1.

C.A.6 (Tenn.) 1986. To be admissible under common law, proposition for which relevant evidence is offered must be “material”; “material” means that proposition to be proved must be matter or issue in dispute in case.—U.S. v. Dunn, 805 F.2d 1275.—Crim Law 382.

C.A.6 (Tenn.) 1979. Where truthful answers by grand jury witness might well have assisted grand jury in its investigation or influenced it in its pursuit of facts, false statements were “material” within meaning of statute despite contention that they were rendered immaterial by virtue of abundance of evidence already in the Government’s possession at the time they were made. 18 U.S.C.A. § 1623.—U.S. v. Richardson, 596 F.2d 157.—Perj 11(7).

C.A.5 (Tex.) 2002. A statement or omitted fact is “material,” for purposes of a securities fraud claim under Rule 10b–5, if there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—ABC Arbitrage Plaintiffs Group v. Tchuruk, 291 F.3d 336, rehearing and rehearing denied 45 Fed.Appx. 327.—Sec Reg 60.28(11), 60.46.

C.A.5 (Tex.) 2002. Evidence is “material” under *Brady* when there is a reasonable probability that the outcome of the trial would have been different if the suppressed evidence had been disclosed to defendant.—U.S. v. Runyan, 290 F.3d 223, rehearing denied 37 Fed.Appx. 93, certiorari denied 123 S.Ct. 137, 154 L.Ed.2d 149.—Crim Law 700(2.1).

C.A.5 (Tex.) 2001. When district court denies motion for summary judgment on basis that there exist genuine issues of material fact, it is actually making two separate legal conclusions: (1) that issues of fact in question are “genuine,” i.e., that evidence is sufficient to permit reasonable factfinder to return verdict for nonmoving party; and (2) that issues of fact are “material,” i.e., that resolution of issues might affect outcome of suit under governing law.—Chiu v. Plano Independent School Dist., 260 F.3d 330.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 2001. An issue is “material,” precluding summary judgment, if its resolution could affect the outcome of the action. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—Daniels v. City of Arlington, Tex., 246 F.3d 500, rehearing and rehearing denied 254 F.3d 72, certiorari denied 122 S.Ct. 347, 534 U.S. 951, 151 L.Ed.2d 262.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 2000. Fact is “material” for summary judgment purposes if its resolution in favor of one party might affect the outcome of the lawsuit

under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Hamilton v. Segue Software Inc., 232 F.3d 473.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 2000. Under Texas securities law, a misrepresentation or omission is “material” if there was an appreciable likelihood that it could have significantly affected the investment decisions of a reasonable investor by substantially altering the information available to him in deciding whether to invest. Vernon’s Ann.Texas Civ.St. art. 581–33, subd. A.—In re Westcap Enterprises, 230 F.3d 717, rehearing and rehearing denied 239 F.3d 367.—Sec Reg 278.

C.A.5 (Tex.) 2000. Defendant’s false statements in income tax returns, claiming black taxes in amount of \$43,209, were “material” to tax refund claims, for purposes of conviction for making false claims to government. 18 U.S.C.A. § 287.—U.S. v. Foster, 229 F.3d 1196, certiorari denied 121 S.Ct. 1202, 531 U.S. 1197, 149 L.Ed.2d 116.—Int Rev 5263.30.

C.A.5 (Tex.) 2000. Evidence which prosecution failed to disclose during criminal trial is “material,” constituting a due process violation, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—Hill v. Johnson, 210 F.3d 481, certiorari denied 121 S.Ct. 2001, 532 U.S. 1039, 149 L.Ed.2d 1004.—Const Law 268(5).

C.A.5 (Tex.) 2000. Evidence is “material,” for purposes of *Brady* claim, when there is reasonable probability that a different outcome would have resulted if the government had disclosed the evidence prior to trial.—Murphy v. Johnson, 205 F.3d 809, certiorari denied 121 S.Ct. 380, 531 U.S. 957, 148 L.Ed.2d 293.—Crim Law 700(2.1).

C.A.5 (Tex.) 2000. For purposes of summary judgment, an issue is “material” if it involves a fact that might affect the outcome of the suit under the governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Hinsley, 201 F.3d 638.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 1999. Evidence is “material” for purposes of *Brady* only if there is a reasonable probability (which might more properly be phrased as “significant possibility”) that the result of the proceeding would have been different if the evidence had been disclosed, and the reviewing court should consider the suppressed items collectively, not item by item.—Jackson v. Johnson, 194 F.3d 641, certiorari denied 120 S.Ct. 1437, 529 U.S. 1027, 146 L.Ed.2d 326.—Crim Law 700(3).

C.A.5 (Tex.) 1999. Evidence is “material,” for purpose of *Brady* disclosure requirements, only where there exists a reasonable probability that had the evidence been disclosed the result at trial would have been different.—Felder v. Johnson, 180 F.3d 206, certiorari denied 120 S.Ct. 630, 528 U.S. 1067, 145 L.Ed.2d 520, rehearing denied 120 S.Ct. 630, 528 U.S. 1067, 145 L.Ed.2d 521.—Crim Law 700(2.1).

C.A.5 (Tex.) 1999. Issue is “material” within meaning of summary judgment rule if it involves fact that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Merritt-Campbell, Inc. v. RXP Products, Inc., 164 F.3d 957.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 1998. Evidence is “material,” and subject to disclosure under *Brady*, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; in this context, a “reasonable probability” is a probability sufficient to undermine confidence in the outcome.—Little v. Johnson, 162 F.3d 855, certiorari denied 119 S.Ct. 1768, 526 U.S. 1118, 143 L.Ed.2d 798.—Crim Law 700(2.1).

C.A.5 (Tex.) 1998. Exculpatory evidence is “material,” so that prosecution has duty under *Brady* to disclose evidence, only if there is a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 5.—U.S. v. Burns, 162 F.3d 840, certiorari denied August v. U.S., 119 S.Ct. 1477, 526 U.S. 1076, 143 L.Ed.2d 560.—Crim Law 700(2.1).

C.A.5 (Tex.) 1997. Statements are “material” within meaning of statute prohibiting making of false statements to government agent when statements have natural tendency or capacity to deceive, affect, or influence federal agency. 18 U.S.C.A. § 1001.—U.S. v. Sidhu, 130 F.3d 644.—Fraud 68.10(4).

C.A.5 (Tex.) 1997. To establish due process violation based on State’s knowing use of false or misleading evidence, defendant must show that evidence was false, that evidence was material, and that prosecution knew that evidence was false; for these purposes, evidence is “false” if, inter alia, it is specific misleading evidence important to prosecution’s case in chief, and false evidence is “material” only if there is any reasonable likelihood that it could have affected jury’s verdict. U.S.C.A. Const. Amend. 14.—Nobles v. Johnson, 127 F.3d 409, certiorari denied 118 S.Ct. 1845, 523 U.S. 1139, 140 L.Ed.2d 1094.—Const Law 268(9).

C.A.5 (Tex.) 1997. Prosecution witness’s testimony in penalty phase of capital murder case that defendant had raped her and confessed to killing other women was “material” to issue of defendant’s future dangerousness, so that prosecution’s failure to disclose witness’s criminal record, which would have led defendant to discover witness’s history of mental illness, violated *Brady v. Maryland*; investigating officer’s testimony did not corroborate witness’s testimony as to rape or confession, and that testimony was critical part of state’s case on future dangerousness.—East v. Johnson, 123 F.3d 235.—Sent & Pun 1747.

C.A.5 (Tex.) 1997. When testimony of witness who might have been impeached by undisclosed evidence is strongly corroborated by additional evidence, undisclosed evidence generally is not found to be “material” for purposes of *Brady v. Maryland*,

which precludes prosecution from withholding exculpatory evidence; in contrast, when withheld evidence would seriously undermine testimony of key witness on essential issue or there is no strong corroboration, evidence may be material.—East v. Johnson, 123 F.3d 235.—Crim Law 700(4).

C.A.5 (Tex.) 1997. Suppressed evidence is “material” within meaning of *Brady* rule pertaining to withholding of material, exculpatory evidence only if there is reasonable probability that, had evidence been disclosed to defendant, the result of proceeding would have been different. U.S.C.A. Const. Amend. 5.—U.S. v. Gray, 105 F.3d 956, certiorari denied Luchkowec v. U.S., 117 S.Ct. 1326, 520 U.S. 1150, 137 L.Ed.2d 487, certiorari denied 117 S.Ct. 1856, 520 U.S. 1246, 137 L.Ed.2d 1057, certiorari denied Satz v. U.S., 117 S.Ct. 2530, 521 U.S. 1128, 138 L.Ed.2d 1030, habeas corpus dismissed by 2002 WL 22080.—Crim Law 700(2.1).

C.A.5 (Tex.) 1996. Omitted or misrepresented fact is “material,” in Rule 10b–5 case, if there is substantial likelihood that reasonable investor would have viewed fact as significantly altering mix of information available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—U.S. v. Peterson, 101 F.3d 375, certiorari denied 117 S.Ct. 1346, 520 U.S. 1161, 137 L.Ed.2d 504.—Sec Reg 60.46.

C.A.5 (Tex.) 1996. To prevail on *Brady* claim, habeas petitioner must prove that prosecution suppressed or withheld evidence, which was favorable to defense and “material” to either guilt or punishment; materiality requires petitioner to demonstrate that there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—Westley v. Johnson, 83 F.3d 714, rehearing and suggestion for rehearing denied 95 F.3d 56, certiorari denied 117 S.Ct. 773, 519 U.S. 1094, 136 L.Ed.2d 718, rehearing denied 117 S.Ct. 1290, 520 U.S. 1140, 137 L.Ed.2d 365.—Crim Law 700(2.1).

C.A.5 (Tex.) 1996. In context of habeas petitioner’s claim that *Brady* violation occurred in the state trial, supplemental offense report that was suppressed and contained favorable evidence was not “material” inasmuch as it did not contain any significant new evidence. U.S.C.A. Const.Amend. 14.—Westley v. Johnson, 83 F.3d 714, rehearing and suggestion for rehearing denied 95 F.3d 56, certiorari denied 117 S.Ct. 773, 519 U.S. 1094, 136 L.Ed.2d 718, rehearing denied 117 S.Ct. 1290, 520 U.S. 1140, 137 L.Ed.2d 365.—Hab Corp 480.

C.A.5 (Tex.) 1996. To prevail on due process claim premised on prosecution’s alleged presentation of false and misleading testimony, habeas petitioner had to show that testimony was false, testimony was material to verdict, and prosecutor knew or believed testimony to be false; false evidence is “material” only if there is any reasonable likelihood that false testimony could have affected jury’s verdict. U.S.C.A. Const.Amend. 14.—Westley v. Johnson, 83 F.3d 714, rehearing and suggestion for rehearing denied 95 F.3d 56, certiorari denied 117

S.Ct. 773, 519 U.S. 1094, 136 L.Ed.2d 718, rehearing denied 117 S.Ct. 1290, 520 U.S. 1140, 137 L.Ed.2d 365.—Const Law 268(9).

C.A.5 (Tex.) 1996. In order to obtain reversal of conviction on grounds that government elicited false testimony, defendant must show that testimony was false, prosecution knew it was false, and it was material; false testimony is "material" if there is any reasonable likelihood that it could have affected judgment of jury.—U.S. v. Grosz, 76 F.3d 1318, rehearing and suggestion for rehearing denied 84 F.3d 435, certiorari denied 117 S.Ct. 167, 519 U.S. 862, 136 L.Ed.2d 110.—Crim Law 706(2).

C.A.5 (Tex.) 1995. To be "material," for purposes of statute criminalizing material omissions from entries made in the books or records of savings and loan association, omission must have capacity to impair or pervert functioning of government agency. 18 U.S.C.A. § 1006.—U.S. v. Baker, 61 F.3d 317.—B & L Assoc 23(8).

C.A.5 (Tex.) 1995. Undisclosed evidence is "material," under *Brady* case requiring disclosure of exculpatory material, if there is reasonable probability that, had evidence been disclosed to defendant, result of proceeding would have been different.—East v. Scott, 55 F.3d 996, appeal after remand 123 F.3d 235.—Crim Law 700(2.1).

C.A.5 (Tex.) 1994. Issue is "material" for purposes of summary judgment if it involves fact that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Thomas v. LTV Corp., 39 F.3d 611.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 1994. Fact is "material," for summary judgment purposes, if its resolution in favor of one party might affect outcome of lawsuit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Ginsberg 1985 Real Estate Partnership v. Cadle Co., 39 F.3d 528.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 1994. For purposes of obstruction of justice sentencing enhancement due to perjury, matter is "material" if it is designed to substantially affect outcome of case. U.S.S.G. § 3C1.1, 18 U.S.C.A.App.—U.S. v. Cabral-Castillo, 35 F.3d 182, certiorari denied 115 S.Ct. 1157, 513 U.S. 1175, 130 L.Ed.2d 1113.—Sent & Pun 761.

C.A.5 (Tex.) 1994. For purposes of claim under *Brady*, providing that exculpatory evidence may not be withheld, evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 5.—U.S. v. Neal, 27 F.3d 1035, rehearing denied, certiorari denied Joyce v. U.S., 115 S.Ct. 530, 513 U.S. 1008, 130 L.Ed.2d 433, certiorari denied 115 S.Ct. 1165, 513 U.S. 1179, 130 L.Ed.2d 1120.—Crim Law 700(2.1).

C.A.5 (Tex.) 1994. To obtain reversal based upon prosecutor's use of perjured testimony, habeas petitioner must show that statements were actually false, state knew they were false, and statements were "material," so as to be highly significant factor reasonably likely to have affected jury's ver-

dict. U.S.C.A. Const.Amend. 5, 14.—Blackmon v. Scott, 22 F.3d 560, certiorari denied 115 S.Ct. 671, 513 U.S. 1060, 130 L.Ed.2d 604, appeal after remand 145 F.3d 205, certiorari denied 119 S.Ct. 1258, 526 U.S. 1021, 143 L.Ed.2d 355.—Hab Corp 491.

C.A.5 (Tex.) 1994. Issue is "material" for purposes of motion for summary judgment if it involves fact that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Burgos v. Southwestern Bell Telephone Co., 20 F.3d 633.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 1994. Government violates due process when it suppresses material evidence favorable to defense; evidence is "material" only if there is a reasonable probability that verdict would have been different had the evidence been disclosed to defendant, or if, in light of nondisclosure, reviewing court's confidence in guilty verdict is undermined. U.S.C.A. Const.Amend. 5.—U.S. v. Aggarwal, 17 F.3d 737, rehearing denied.—Const Law 268(5).

C.A.5 (Tex.) 1994. Variance between indictment and proof at trial is "material" only if it prejudices defendant's substantial rights, either by surprising defendant at trial or by placing him at risk of double jeopardy. U.S.C.A. Const.Amend. 5.—U.S. v. Baker, 17 F.3d 94, rehearing and rehearing denied 21 F.3d 1110, certiorari denied 115 S.Ct. 164, 513 U.S. 857, 130 L.Ed.2d 101.—Ind & Inf 171.

C.A.5 (Tex.) 1993. Testimony is "material" to point in question, as required for conviction under perjury statute governing contradictory statements made in proceedings before or ancillary to court or grand jury of United States, if it would have natural effect or tendency to influence decision of tribunal to which it is addressed. 18 U.S.C.A. § 1623(c).—U.S. v. McAfee, 8 F.3d 1010.—Perj 11(8).

C.A.5 (Tex.) 1993. For purposes of securities fraud claim, fact is considered "material" if there is substantial likelihood that reasonable shareholder would consider it important.—Shushany v. Allwaste, Inc., 992 F.2d 517, rehearing denied.—Sec Reg 60.27(1), 60.28(11).

C.A.5 (Tex.) 1993. Buyer of stock, who alleged that corporation's prospectus misstated that corporation had \$25 million in "potential problem loans," when it should have included in that category additional \$50 million in loans for which payments were 30 to 89 days overdue, did not show that alleged omitted or misrepresented information was "material" in context of prospectus as a whole, and thus, buyer failed to establish fraud in violation of the Securities Act and Securities Exchange Act fraud provisions. Securities Act of 1933, §§ 11, 12, 15, 15 U.S.C.A. §§ 77k, 77l, 77o; Securities Exchange Act of 1934, §§ 10(b), 20(a), 15 U.S.C.A. §§ 78j(b), 78t(a).—Krim v. BancTexas Group, Inc., 989 F.2d 1435.—Sec Reg 25.62(4).

C.A.5 (Tex.) 1992. Extrinsic evidence is "material," not collateral, if it contradicts any part of witness' account of background and circumstances of material transaction, which as matter of human

experience he would not have been mistaken about if story were true. Fed.Rules Evid.Rules 402, 403, 28 U.S.C.A.—U.S. v. Lopez, 979 F.2d 1024, rehearing denied, certiorari denied *Ozuna Ramirez v. U.S.*, 113 S.Ct. 2349, 508 U.S. 913, 124 L.Ed.2d 258.—Witn 406.

C.A.5 (Tex.) 1992. Twin high-rise apartment tower statement used in appraisal of real property was “material” to lender’s decision to make loan, and thus, proof that appraiser made misrepresentations as to twin high-rise apartment towers at bequest of defendants was sufficient to support defendants’ convictions based on fraud; high rise misrepresentation was necessary to appraisal which, in turn, was necessary to defendants’ procuring of loan from lender.—U.S. v. Heath, 970 F.2d 1397, rehearing denied 976 F.2d 732, rehearing denied 978 F.2d 879, certiorari denied *Cheng v. U.S.*, 113 S.Ct. 1643, 507 U.S. 1004, 123 L.Ed.2d 265, certiorari denied 113 S.Ct. 1643, 507 U.S. 1004, 123 L.Ed.2d 265.—Banks 509.25.

C.A.5 (Tex.) 1991. Statement made by witness in open court is “material” for purposes of perjury statute, if it would have natural effect or tendency to influence decision of tribunal to which it is addressed. 18 U.S.C.A. § 1623.—U.S. v. Salinas, 923 F.2d 339.—Perj 11(2).

C.A.5 (Tex.) 1989. Information regarding co-conspirator’s inconsistent pretrial statements as to amount of cocaine he purchased from defendant and as to time at which purchase occurred was not “material” to defendant’s conspiracy and substantive convictions, so that defendant was not entitled to new trial based on prosecutor’s failure to disclose information in alleged violation of *Brady*.—U.S. v. Weintraub, 871 F.2d 1257.—Crim Law 700(4).

C.A.5 (Tex.) 1981. To be “material” within meaning of Social Security Act amendment limiting remand for additional evidentiary hearing to a showing of new and material evidence the evidence must be relevant and probative. Social Security Act, § 205(g) as amended 42 U.S.C.A. § 405(g).—*Chaney v. Schweiker*, 659 F.2d 676.—Social S 149.5.

C.A.5 (Tex.) 1980. For purposes of prosecution for making false statements to grand jury, a false statement is not “material” unless it is capable of influencing tribunal on issue before it. 18 U.S.C.A. § 1623(a).—U.S. v. Bell, 623 F.2d 1132.—Perj 11(7).

C.A.5 (Tex.) 1973. The test of whether false statement was “material” is whether it was capable of influencing the tribunal on the issue, or whether the false testimony would have the natural effect or tendency to influence, impede or dissuade an investigatory body from pursuing its investigation. 18 U.S.C.A. § 1621.—U.S. v. Makris, 483 F.2d 1082, certiorari denied 94 S.Ct. 1408, 415 U.S. 914, 39 L.Ed.2d 467, on remand 398 F.Supp. 507, affirmed 535 F.2d 899, rehearing denied 540 F.2d 1086, certiorari denied 97 S.Ct. 1598, 430 U.S. 954, 51 L.Ed.2d 803, rehearing denied 97 S.Ct. 1707, 431 U.S. 909, 52 L.Ed.2d 394.—Perj 11(2).

C.A.10 (Utah) 2001. Two reports that allegedly could have been used to impeach witness were not “material” and therefore government’s failure to disclose them did not violate *Brady* and defendant’s due process rights, so as to render involuntary his guilty plea to illegal possession of firearm after domestic violence conviction; witness did not provide only link between defendant and firearm, and there was no objective evidence that defendant would have insisted on going to trial had reports been disclosed. U.S.C.A. Const.Amend. 5; 18 U.S.C.A. § 922(g)(9).—U.S. v. Walters, 269 F.3d 1207.—Const Law 268(5); Crim Law 273.1(3).

C.A.10 (Utah) 2001. In the context of an attack on validity of plea, evidence is considered “material” for *Brady* disclosure purposes when there is a reasonable probability that, but for the failure to produce such information, defendant would not have entered the plea but instead would have insisted on going to trial; assessment of that question involves an objective inquiry that asks not what a particular defendant would do, but rather what the likely persuasiveness of the withheld information is.—U.S. v. Walters, 269 F.3d 1207.—Crim Law 273.1(3).

C.A.10 (Utah) 1972. For false testimony to be “material” so as to sustain perjury prosecution, it must be capable of influencing tribunal on issue before it. 18 U.S.C.A. § 1621.—U.S. v. Whitlock, 456 F.2d 1230.—Perj 11(2).

C.A.10 (Utah) 1972. Where witness testified in Mann Act prosecution that defendant had carried her to Salt Lake City for purpose of prostitution, that she practiced her profession there and turned over her total income from such practices to defendant and defendant denied participating in her activities after her arrival and stated, on cross-examination, that he had about \$200 on his person at time of trial, but he was then found to have on his person the sum of \$2,179.61, his testimony as to amount of money which he had on his person related to “material” issue so as to sustain conviction for perjury. 18 U.S.C.A. §§ 1621, 2421.—U.S. v. Whitlock, 456 F.2d 1230.—Perj 11(2).

C.A.2 (Vt.) 1994. False declaration in civil deposition is “material,” as required to support conviction for making false declarations in a civil deposition, if truthful answer might reasonably be calculated to lead to discovery of evidence admissible at trial of underlying suit. 18 U.S.C.A. § 1623(a); Fed.Rules Civ.Proc.Rule 26(b)(1), 28 U.S.C.A.—U.S. v. Kross, 14 F.3d 751, certiorari denied 115 S.Ct. 99, 513 U.S. 828, 130 L.Ed.2d 48.—Perj 11(2).

C.A.4 (Va.) 2003. Under *Brady*, touchstone of materiality is a concern that suppressed evidence might have affected the outcome of trial; put differently, suppressed evidence is “material” if there is a reasonable probability that, had the evidence been disclosed to defense, result of proceeding would have been different, with a reasonable probability being shown when government’s evidentiary suppression undermines confidence in outcome of

trial.—*Monroe v. Angelone*, 323 F.3d 286.—Crim Law 700(2.1).

C.A.4 (Va.) 2002. Evidence was sufficient to support finding that competing tax preparation service e-file provider's false and misleading advertisement, that used "refund amount" rather than "loan," was "material" to reasonable consumer's purchasing decision; 21.7% of consumers surveyed indicated that use of phrase "refund amount" would be more effective than use of term "loan," because consumers associated loans with bundle of unfavorable conditions and obligations. *Lanham Trade-Mark Act*, §§ 29-45, 15 U.S.C.A. §§ 1111-1127.—*JTH Tax, Inc. v. H & R Block Eastern Tax Services, Inc.*, 28 Fed.Appx. 207, on remand 245 F.Supp.2d 749.—*Trade Reg* 870(1).

C.A.4 (Va.) 2002. To recover under the *Lanham Act* on a false and deceptive advertising claim, a plaintiff must demonstrate, inter alia, that the false or misleading advertisements at issue were "material" in that they were likely to influence the purchasing decision. *Lanham Trade-Mark Act*, §§ 29-45, 15 U.S.C.A. §§ 1111-1127.—*JTH Tax, Inc. v. H & R Block Eastern Tax Services, Inc.*, 28 Fed.Appx. 207, on remand 245 F.Supp.2d 749.—*Trade Reg* 870(1).

C.A.4 (Va.) 2002. In the context of government's *Brady* obligations to disclose material, favorable evidence, evidence is "material" when its suppression undermines confidence in the outcome of the trial; that is, where there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*U.S. v. Cole*, 293 F.3d 153, certiorari denied 123 S.Ct. 387, 154 L.Ed.2d 296.—Crim Law 700(2.1).

C.A.4 (Va.) 2001. Defendant must prove three elements to establish a due process violation under *Brady v. Maryland*: (1) prosecution withheld or suppressed evidence; (2) evidence is favorable to defendant; and (3) evidence is "material" to defense, i.e., there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—*U.S. v. Givens*, 1 Fed.Appx. 160.—Const Law 268(5).

C.A.4 (Va.) 2001. Notes of government agent's interview with alleged intermediary, who denied participation in drug trafficking operation with defendants, in contradiction to government witness' testimony that he purchased drugs from defendants through alleged intermediary, were not "material" to prosecution for drug trafficking offenses, so that government's failure to tender those notes did not violate duty under *Brady* to disclose exculpatory evidence; witness would not have been successfully impeached with the notes, since alleged intermediary would naturally deny his involvement in the trafficking operation.—*U.S. v. Stokes*, 261 F.3d 496, certiorari denied 122 S.Ct. 1546, 535 U.S. 990, 152 L.Ed.2d 471, rehearing denied 122 S.Ct. 2384, 536 U.S. 918, 153 L.Ed.2d 202.—Crim Law 700(4).

C.A.4 (Va.) 2000. Evidence is "favorable" under *Brady* if it is exculpatory or if it could be used

to impeach prosecution witnesses, and it is "material" if there exists a reasonable probability that had the evidence been disclosed the result at trial would have been different.—*Goins v. Angelone*, 226 F.3d 312, certiorari denied 121 S.Ct. 649, 531 U.S. 1046, 148 L.Ed.2d 553.—Crim Law 700(2.1), 700(4).

C.A.4 (Va.) 1998. Allegedly perjurious statement is "material" if it has a natural tendency to influence, or is capable of influencing, the decision-making body to which it was addressed.—*U.S. v. Sarihifard*, 155 F.3d 301.—Perj 11(2).

C.A.4 (Va.) 1998. For purposes of *Brady* claim based on government's alleged failure to disclose exculpatory evidence, evidence is "material" if there is a reasonable probability that its disclosure would have produced a different outcome. U.S.C.A. Const.Amend. 5.—*U.S. v. Sarihifard*, 155 F.3d 301.—Crim Law 700(2.1).

C.A.4 (Va.) 1997. Where prosecution fails to disclose evidence favorable to accused, such evidence is "material" only where there exists reasonable probability that had evidence been disclosed, result of trial would have been different; "reasonable probability" of different result is shown when government's failure to disclose evidence undermines confidence in outcome of trial. U.S.C.A. Const.Amend. 5.—*U.S. v. Ellis*, 121 F.3d 908, certiorari denied 118 S.Ct. 738, 522 U.S. 1068, 139 L.Ed.2d 674, denial of habeas corpus affirmed 201 F.3d 438, appeal from denial of post-conviction relief dismissed 215 F.3d 1322.—Crim Law 700(2.1).

C.A.4 (Va.) 1997. To establish that undisclosed evidence is "material" under *Brady*, defendant does not have to show by preponderance of the evidence that disclosure of evidence would have resulted in acquittal; what is required is showing that favorable evidence could reasonably be taken to put whole case in such a different light as to undermine confidence in verdict. U.S.C.A. Const.Amend. 5.—*U.S. v. Ellis*, 121 F.3d 908, certiorari denied 118 S.Ct. 738, 522 U.S. 1068, 139 L.Ed.2d 674, denial of habeas corpus affirmed 201 F.3d 438, appeal from denial of post-conviction relief dismissed 215 F.3d 1322.—Crim Law 700(2.1).

C.A.4 (Va.) 1997. Defendant's false testimony before grand jury which was investigating assault that he did not know how or why victim had been assaulted was "material" to such proceeding and, therefore, supported perjury conviction. 18 U.S.C.A. § 1623(a).—*U.S. v. Dickerson*, 114 F.3d 464.—Perj 11(7).

C.A.4 (Va.) 1997. Statement is "material", for purposes of offense of perjury, if it has natural tendency to influence, or is capable of influencing, decision-making body to which it was addressed. 18 U.S.C.A. § 1623(a).—*U.S. v. Dickerson*, 114 F.3d 464.—Perj 11(2).

C.A.4 (Va.) 1996. For purposes of statute prohibiting false, fictitious, or fraudulent statement as to material fact in matter within agency jurisdiction, fact is "material" if it has natural tendency to influence agency action or is capable of influencing

agency action. 18 U.S.C.A. § 1001.—U.S. v. Ismail, 97 F.3d 50.—Fraud 68.10(4).

C.A.4 (Va.) 1996. Under *Brady v. Maryland*, it is only suppression of “material” exculpatory evidence by government that violates defendant’s due process rights; evidence is “material” only if there is reasonable probability that, had evidence been disclosed to defense, results of proceeding would have been different, and “reasonable probability” of different result is shown when government’s evidentiary suppression undermines confidence in outcome of trial. U.S.C.A. Const.Amend. 14.—Hoke v. Netherland, 92 F.3d 1350, certiorari denied 117 S.Ct. 630, 519 U.S. 1048, 136 L.Ed.2d 548.—Const Law 268(5).

C.A.4 (Va.) 1996. Two interviewees statements that they had normal sexual intercourse with murder/rape victim previously, and only on several occasions, was not “material” to issue of whether victim consented to have sex with defendant, who was charged with victim’s murder and rape; thus, prosecution’s failure to produce interviewees’ statements did not render defendant’s rape conviction invalid under *Brady*.—Hoke v. Netherland, 92 F.3d 1350, certiorari denied 117 S.Ct. 630, 519 U.S. 1048, 136 L.Ed.2d 548.—Crim Law 700(3).

C.A.4 (Va.) 1996. Statement is “material,” for purpose of perjury prosecution, if it has natural tendency to influence, or is capable of influencing, decision-making body to which it was addressed. 18 U.S.C.A. § 1623(a).—U.S. v. Littleton, 76 F.3d 614.—Perj 11(2).

C.A.4 (Va.) 1993. Only disputes over facts that might affect the outcome of the suit under the governing substantive law will be “material” so as to properly preclude entry of summary judgment.—Drewitt v. Pratt, 999 F.2d 774.—Fed Civ Proc 2470.1.

C.A.4 (Va.) 1986. For purpose of protection under Miller Act [Miller Act, §§ 1–4, 40 U.S.C.A. §§ 270a–270d] thing which may reasonably be expected to be removed by contractor and used in subsequent jobs is part of contractor’s “capital equipment,” but something which is reasonably expected to have no utility or economic value to contract after completion of work may be classified as “material.”—U.S. for the Use of Sunbelt Pipe Corp. v. U.S. Fidelity and Guar. Co., 785 F.2d 468.—U S 67(11).

C.A.9 (Wash.) 1994. State’s failure to disclose that key witness had failed lie detector test violated defendant’s right to due process under *Brady*; results of test were favorable to defendant, bore directly on credibility of witnesses who provided only direct evidence of premeditation and supported defendant’s theory of case, and, regardless of whether results would have been admissible at trial, evidence was “material” because it could have assisted defendant in preparing and presenting case. U.S.C.A. Const.Amend. 14.—Bartholomew v. Wood, 34 F.3d 870, certiorari granted, reversed 116 S.Ct. 7, 516 U.S. 1, 133 L.Ed.2d 1, rehearing denied 116 S.Ct. 583, 516 U.S. 1018, 133 L.Ed.2d 505, on

remand 96 F.3d 1451.—Const Law 268(5); Crim Law 700(4).

C.A.9 (Wash.) 1993. Under *Brady*, government must disclose evidence favorable to defendant and material to either guilt or punishment; evidence is “material” only if reasonable probability exists that, had it been disclosed, result would have been different.—Swan v. Peterson, 6 F.3d 1373, certiorari denied 115 S.Ct. 479, 513 U.S. 985, 130 L.Ed.2d 393.—Crim Law 700(2.1).

C.A.9 (Wash.) 1979. To safeguard defendant’s right to due process of law, Government must disclose to defendants any material, exculpatory evidence of which Government has knowledge; for purposes of said rule, evidence is “material” if it creates a reasonable doubt of defendant’s guilt that did not otherwise exist. U.S.C.A. Const. Amend. 5.—U.S. v. Friedman, 593 F.2d 109.—Crim Law 700(2.1).

C.A.9 (Wash.) 1978. Where, although defendant’s statement to border agent was oral, unsworn and unrelated to any monetary claim against United States, he was claiming privilege of entry at time he falsely stated that he had not been abroad, and his statement potentially impaired function of customs service in that persons coming from overseas were referred automatically to more rigorous inspection than those who had stayed in Canada, statement had intrinsic capability of bringing about entry of contraband into United States, and statement was “material” for purposes of general false statement statute. 18 U.S.C.A. § 1001.—U.S. v. Rose, 570 F.2d 1358.—Fraud 68.10(4).

C.A.9 (Wash.) 1963. Testimony of bankrupt at a hearing before referee that he did not put up any money in going into the used car business with two brothers was “material” within the perjury statute, in view of fact testimony involved possible concealment of property and its investment in a business venture, and related to possibility of denying a discharge. 18 U.S.C.A. § 1621.—Sigman v. U.S., 320 F.2d 176, certiorari denied 84 S.Ct. 485, 375 U.S. 967, 11 L.Ed.2d 415.—Perj 11(2).

C.A.7 (Wis.) 2001. Evidence is “material” to defense, as required to support motion for new trial based on alleged *Brady* violation, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Reyes, 270 F.3d 1158.—Crim Law 700(2.1).

C.A.7 (Wis.) 1997. Exculpatory evidence is “material” to the defense, and thus must be disclosed by the government under the *Brady* rule, if there is reasonable probability that, had evidence been disclosed to the defense, result of the proceeding would have been different; “reasonable probability,” in turn, is that sufficient to undermine confidence in the outcome.—U.S. v. Hamilton, 107 F.3d 499, rehearing denied, certiorari denied 117 S.Ct. 2528, 521 U.S. 1127, 138 L.Ed.2d 1028.—Crim Law 700(2.1).

C.A.7 (Wis.) 1993. For purposes of determining whether *Brady* violation has occurred, evidence is

“material” only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome of proceeding.—U.S. v. Pollard, 994 F.2d 1262, rehearing denied, certiorari denied 114 S.Ct. 1115, 510 U.S. 1136, 127 L.Ed.2d 425, appeal after remand 56 F.3d 776.—Crim Law 700(2.1).

C.A.7 (Wis.) 1992. Evidence is “material” under *Brady* only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Rossy, 953 F.2d 321, certiorari denied 112 S.Ct. 1240, 502 U.S. 1120, 117 L.Ed.2d 473.—Crim Law 700(2.1).

C.A.7 (Wis.) 1988. Evidence may be “material,” for purposes of rule requiring Government to disclose evidence favorable to defendant, not only if evidence goes directly to merits, but also if evidence may be used to impeach prosecution witness. U.S.C.A. Const.Amends. 5, 14.—U.S. v. Phillips, 854 F.2d 273, rehearing denied.—Crim Law 700(2.1), 700(4).

Cust. & Pat.App. 1976. Where issue of fact was not relevant to resolution of controlling legal issue, it was not “material” so as to preclude summary judgment.—U. S. v. Sumitomo Shoji, New York, Inc., 534 F.2d 320, 63 C.C.P.A. 79.—Fed Civ Proc 2470.1.

Cust. & Pat.App. 1970. If patent claims would not have been allowed but for misrepresentation of facts by applicant, the facts were “material” and application for patent may be stricken under Patent Office Practice Rule, regardless of their effect on objective question of patentability. Patent Office Practice Rules, rule 56, 35 U.S.C.A. App.—Norton v. Curtiss, 433 F.2d 779, 57 C.C.P.A. 1384.—Pat 97.

Ct.Cl. 1969. “Material” as defined in general provisions of government contract did not include working plans which Federal Maritime Board agreed to supply to contractor.—National Steel & Shipbuilding Co. v. U.S., 419 F.2d 863, 190 Ct.Cl. 247.—U S 70(8).

C.C.A.9 1938. In proceeding on petition of National Labor Relations Board to enforce order requiring employer to reinstate discharged employees, employer was not entitled to adduce additional evidence showing that discharged employees had signed releases acknowledging receipt of payments of money in full settlement of their claims for back pay, since evidence was not concerned with propriety of order, and hence was not “material” within National Labor Relations Act provision requiring showing that additional evidence sought to be adduced is “material.” National Labor Relations Act, § 10(e), 29 U.S.C.A. § 160(e).—N.L.R.B. v. American Potash & Chemical Corp., 98 F.2d 488, certiorari denied American Potash & Chemical Corporation v. National Labor Relations Board, 59 S.Ct. 582, 306 U.S. 643, 83 L.Ed. 1043.—Labor 732.

C.C.A.9 1938. In proceeding on petition of National Labor Relations Board to enforce order re-

quiring employer to reinstate discharged employee, employer was not entitled to require taking of further evidence by Board showing number of employees who had refused reinstatement, since question presented was one of enforcement and not of validity of the order, and hence was not “material” within the provisions of the National Labor Relations Act, requiring showing that additional evidence sought to be adduced is “material.” National Labor Relations Act § 10(e), 29 U.S.C.A. § 160(e).—N.L.R.B. v. Biles-Coleman Lumber Co., 96 F.2d 197.—Labor 732.

C.C.A.2 (Conn.) 1941. Cartridges of its own manufacture used by plaintiff's predecessor to test for safety completed firearms manufactured by predecessor were “used” as “material” in the “production” of the firearms within statutes exempting from “excise taxes” an article sold for use as material in the manufacture or production of, or for use as a component part of, an article to be manufactured or produced by the vendee which will be taxable. Revenue Act 1932, §§ 610, 620, 622, 26 U.S.C.A.Int.Rev.Acts, pages 612, 619, 622.—Western Cartridge Co. v. Smith, 121 F.2d 593.—Int Rev 4329.

C.C.A.5 (Fla.) 1941. Where insured who died from coronary thrombosis had, within five years prior to applying for policies, received medical treatment for ailment diagnosed as cardio spasm, answer in application denying that insured had received medical treatment within past five years was “material” and precluded recovery on the policies without regard to whether answer was given with a conscious, fraudulent purpose to deceive.—Metropolitan Life Ins. Co. v. Madden, 117 F.2d 446.—Insurance 3003(11).

C.C.A.5 (La.) 1945. Rental or use value of subcontractor's equipment used in constructing a levee for the government was not “material” within contractor's bond, and surety was not liable where government engineer stopped work and kept equipment idle because of a railroad's unexpected complaint that further work would endanger trestles. Miller Act, § 1, 40 U.S.C.A. § 270a.—U.S. for Use of Edward E. Morgan Co. v. Maryland Cas. Co., 147 F.2d 423.—U S 67(11).

C.C.A.5 (La.) 1940. To sustain conviction for perjury, it is not necessary that the evidence given is “material” to the main issue, but it is sufficient if it is “material” to any proper matter of inquiry.—Blackmon v. U.S., 108 F.2d 572.

C.C.A.2 (N.Y.) 1943. Defendant's false testimony that he made loan of \$5,000 to another was “material” to grand jury's investigation of alleged violations of Anti-Racketeering Act and authorized a conviction of perjury before grand jury. Cr.Code § 125, 18 U.S.C.A. § 1621; Anti-Racketeering Act, 18 U.S.C.A. § 1951.—U.S. v. Hirsch, 136 F.2d 976, certiorari denied 64 S.Ct. 66, 320 U.S. 759, 88 L.Ed. 452.—Perj 11(7).

C.C.A.2 (N.Y.) 1943. Defendant, who allegedly gave false testimony about disposition he had made of \$5,000 bail money returned to him before grand jury during investigation of alleged violations of

Anti-Racketeering Act, could not be heard to say that testimony was not "material" and hence did not authorize perjury prosecution because, even if defendant had told truth, jury would have failed to trace bail money to racketeers. Cr.Code § 125, 18 U.S.C.A. § 1621; Anti-Racketeering Act, 18 U.S.C.A. § 1951.—U.S. v. Hirsch, 136 F.2d 976, certiorari denied 64 S.Ct. 66, 320 U.S. 759, 88 L.Ed. 452.—Perj 11(7).

C.C.A.2 (N.Y.) 1941. An automobile exporter was not precluded from recovering damages from common carriers by water for unjust discrimination in respect to cargo space accommodations accorded exporter because there was space for such shipments during the period of contract on other vessels not going directly to country of importer, and that any automobiles so sent would have been transshipped at same through freight rates, where exporter would have broken its contract in delivering automobiles by transshipment by another route, and there was nothing to show what importer would have consented to the change; the route contracted for being a "material" part of exporter's contract.—Roberto Hernandez, Inc. v. Arnold Bernstein Schiffahrtsgesellschaft, M B H, 116 F.2d 849, certiorari denied *Compania Espanola De Navegacion Maritima, S a v. Roberto Hernandez, Inc.*, 61 S.Ct. 1101, 313 U.S. 582, 85 L.Ed. 1539.—Ship 103.

C.C.A.4 (N.C.) 1935. Every fact, including statements as to treatment by physicians, untruly asserted or wrongfully concealed by insurance applicant is "material" and will avoid policy if knowledge or ignorance of it would influence underwriter's judgment in making contract, establishing degree or character of risk, or in fixing rate irrespective of whether or not such fact contributes to the loss (C.S.N.C. § 6289).—Jeffress v. New York Life Ins. Co., 74 F.2d 874.—Insurance 3003(10).

C.C.A.5 (Tex.) 1946. Whether the drill pipe used in drilling oil wells was "material" or "machinery or machinery parts", within contract, was for jury in buyer's action to recover purchase price paid to seller.—Hawkins v. Frick-Reid Supply Corp., 154 F.2d 88.—Sales 88.

C.C.A.4 (Va.) 1927. Determination whether a question is "material," falsity of which will authorize insurer to avoid a policy based thereon, depends on whether under any circumstances the question can produce a reply which will influence the action of the insurer.—Union Indem. Co. v. Dodd, 21 F.2d 709, 55 A.L.R. 735.

Vet.App. 1997. Evidence is "material," for purposes of reopening previously denied veterans benefits claim, where it is relative and probative of issue at hand and where there is reasonable possibility that, when viewed in context of all evidence, it would change outcome.—Lee v. Brown, 10 Vet.App. 336.—Armed S 134.

Vet.App. 1996. To be "material," new evidence required to reopen finally denied veterans' benefits claim must be probative and must be of such significance that, when it is viewed in context of all evidence, old and new, there is at least reasonable possibility that result would thereby be changed.

38 U.S.C.A. §§ 5108, 7104(b).—Nici v. Brown, 9 Vet.App. 494.—Armed S 134.

Vet.App. 1996. To be "material," for purposes of reopening finally denied veterans benefits claim, probative evidence must, when considered with all evidence both new and old, present possibility or be of such significance that it could potentially change result. 38 U.S.C.A. §§ 5108, 7104(b).—Nici v. Brown, 9 Vet.App. 494.—Armed S 134.

Vet.App. 1996. Evidence is "material" to support reopening final claim when it is probative of issue at hand; when it tends to prove or actually proves merits of claim as to each essential element that was specified basis for last final disallowance of claim, and when, in light of all evidence of record, there is reasonable possibility that outcome of claim on merits would be changed. 38 U.S.C.A. § 5108.—Dolan v. Brown, 9 Vet.App. 358, reconsideration denied 15 Vet.App. 154, appeal dismissed 119 F.3d 14.—Armed S 134.

Vet.App. 1996. Evidence is "material," to support reopening previously and finally disallowed claim, where it is relevant to and probative of issue at hand and where it is of sufficient weight or significance that there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome.—Daniels v. Brown, 9 Vet.App. 348.—Armed S 134.

Vet.App. 1996. On claims to reopen previously and finally disallowed claims, Board of Veterans' Appeals (BVA) must first determine whether evidence presented or secured since prior final disallowance of claim is new and material; evidence is "new" if not merely cumulative of other evidence in record, and "material" if relevant to issue and of sufficient weight or significance that there is reasonable possibility that it would change outcome. 38 U.S.C.A. § 7104(b).—YT v. Brown, 9 Vet.App. 195.—Armed S 134.

Vet.App. 1996. Evidence is "material" for purposes of reopening previously and finally disallowed claim where it is relevant to and probative of issue at hand and where there is reasonable possibility that, when viewed in context of all evidence, both new and old, it would change outcome. 38 U.S.C.A. § 7104(b).—Floyd v. Brown, 9 Vet.App. 88, reconsideration denied 9 Vet.App. 253.—Armed S 134.

Vet.App. 1995. Evidence is "material" to support reopening previously and finally disallowed claim where it is relevant to and probative of issue at hand and where there is reasonable possibility that, when viewed in context of all evidence, both new and old, it would change outcome.—Falzone v. Brown, 8 Vet.App. 398.—Armed S 134.

Vet.App. 1995. Evidence is "material," to support reopening of veteran's claim for service-connection, when it is relevant to and probative of issue at hand and of such weight or significance that there is reasonable possibility that it would change outcome, when viewed in conjunction with old evidence. 38 U.S.C.A. §§ 5108, 7104(b).—Carroll v. Brown, 8 Vet.App. 128.—Armed S 134.

Vet.App. 1995. Evidence if “material” for purposes of motion to reopen previously and finally disallowed claim where it is relevant to and probative of issue at hand and where there is reasonable possibility that, when viewed in context of all evidence, both new and old, it would change outcome. 38 U.S.C.A. §§ 5108, 7104(b).—Blackburn v. Brown, 8 Vet.App. 97.—Armed S 134.

Vet.App. 1995. “Material” evidence is relevant to and probative of issue at hand, and of sufficient weight and significance that there is a reasonable possibility that new evidence, when considered in light of all evidence, would change the outcome. 38 U.S.C.A. §§ 5108, 7104(b).—Barnett v. Brown, 8 Vet.App. 1, affirmed 83 F.3d 1380.—Armed S 134.

Vet.App. 1995. “Material” evidence is that which is relevant and probative of the issue at hand. 38 U.S.C.A. § 7104(d)(1).—Wray v. Brown, 7 Vet.App. 488, review denied 8 Vet.App. 16.—Armed S 134.

Vet.App. 1994. In deciding whether to reopen previously and finally denied claim for veteran’s benefits, evidence is to be considered “new” when it is not merely cumulative of other evidence in record, and “material” when relative to and probative of issue at hand, and of sufficient weight to present reasonable possibility that new evidence, when viewed in context of all evidence, new and old, would change disposition of claim. 38 U.S.C.A. § 5108.—Duran v. Brown, 7 Vet.App. 216.—Armed S 134.

Vet.App. 1994. For purpose of reopening previously and finally disallowed claim, evidence is “material” where it is relevant to and probative of the issue at hand and where it is of sufficient weight or significance that there is reasonable possibility that the new evidence, when viewed in context of all evidence, both old and new, would change outcome. 38 U.S.C.A. § 5108.—Reyes v. Brown, 7 Vet.App. 113.—Armed S 134.

Vet.App. 1994. For purposes of reopening previously and finally disallowed claim, evidence is “material” where it is relevant to and probative of issue at hand and where it is of sufficient weight or significance that there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change the outcome. 38 U.S.C.A. § 5108.—West v. Brown, 7 Vet.App. 70.—Armed S 134.

Vet.App. 1994. Evidence is “material” for purposes of reopening previously denied claim for veterans benefits when relative to and probative of issue at hand, and of sufficient weight to present reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change disposition of claim. 38 U.S.C.A. §§ 5108, 7104(b).—Glynn v. Brown, 6 Vet.App. 523.—Armed S 134.

Vet.App. 1994. Newly presented evidence is “material,” warranting reopening of previously disallowed claim, where it is relevant and probative of issue at hand, and, it is that evidence which creates reasonable possibility that new evidence, when

viewed in context of all evidence, both new and old, would change the outcome.—Solomon v. Brown, 6 Vet.App. 396.—Armed S 134.

Vet.App. 1994. For purposes of reopening veteran’s previously disallowed claim, “material” evidence is that which is relevant to and probative of issue at hand, and of sufficient weight or significance that there is reasonable possibility that new evidence, when viewed in context of all evidence, both old and new, would change outcome. 38 U.S.C.A. § 5108.—Kightly v. Brown, 6 Vet.App. 200.—Armed S 134.

Vet.App. 1993. Evidence is “material,” so as to warrant reopening of previously disallowed claim, if it is relevant to and probative of issue at hand and there is reasonable possibility that the new evidence, when viewed in context of all evidence, both new and old, would change outcome. (Non-precedential disposition.) 38 U.S.C.A. § 5108.—Nichols v. Brown, 6 Vet.App. 317.—Armed S 134.

Vet.App. 1993. For purposes of reopening veteran’s previously disallowed claim, evidence is “material” if it is relevant to and probative of issue at hand and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome. (Non-precedential disposition.) 38 U.S.C.A. § 5108.—Poor v. Brown, 6 Vet.App. 314.—Armed S 134.

Vet.App. 1993. For purposes of reopening previously disallowed claim, evidence is “material” when relative to and probative of the issue at hand and of sufficient weight to present a reasonable possibility that new evidence, when viewed in conjunction with the old, would change disposition of claim. 38 U.S.C.A. § 5108.—Yabut v. Brown, 6 Vet.App. 79.—Armed S 134.

Vet.App. 1993. For purposes of determining whether to reopen veteran’s claim, “material” evidence is relevant to and probative of issue at hand and of sufficient weight and significance that there is reasonable possibility that new evidence, when considered in light of all evidence, would change outcome. 38 U.S.C.A. § 5108.—Guimond v. Brown, 6 Vet.App. 69.—Armed S 134.

Vet.App. 1993. For evidence submitted to reopen veteran’s claim to be “material,” it must be relevant and probative of issue at hand and must be of sufficient weight or significance that, when viewed in context of all the evidence, it would possibly change outcome. 38 U.S.C.A. § 7104(b).—Ramirez v. Brown, 6 Vet.App. 6.—Armed S 134.

Vet.App. 1993. Physician’s letter corroborating treating physician’s opinion that veteran’s hearing loss was noise induced as result of service was “material” evidence, so that reopening of his claim for service connection was warranted; letter was relevant to and probative of issue of service connection, and letter, probative value of which was based on physician’s examination of veteran, laboratory findings, physician’s knowledge and skill in analyzing current examination data and previous medical findings of other experts, and conclusion he

reached, added significantly to probative value of sum total of evidence in support of veteran's claim. 38 U.S.C.A. § 7104(b).—*Ramirez v. Brown*, 6 Vet. App. 6.—Armed S 134.

Vet.App. 1993. For purposes of reopening previously and finally disallowed claim, evidence is "material" where it is relevant to and probative of issue at hand and where it is of sufficient weight or significance that there is reasonable possibility that new evidence, when viewed in context of all evidence, both old and new, would change the outcome.—*Fluker v. Brown*, 5 Vet.App. 296.—Armed S 134.

Vet.App. 1993. For purposes of reopening previously and finally disallowed claim, evidence is "material" where it is relevant and probative and where the evidence, both old and new, would change the outcome. (Non-precedential disposition.)—*Abbott v. Brown*, 5 Vet.App. 197, appeal dismissed 9 F.3d 978.—Armed S 134.

Vet.App. 1993. Evidence is "material" so as to warrant reopening of previously and finally disallowed claim where it is relevant and probative and where there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change the outcome. 38 U.S.C.A. §§ 5108, 7104(b).—*Lewis v. Brown*, 5 Vet.App. 151, review denied 5 Vet.App. 315, appeal dismissed 16 F.3d 419, certiorari denied 118 S.Ct. 1073, 522 U.S. 1126, 140 L.Ed.2d 132.—Armed S 134.

Vet.App. 1993. Evidence is "material" warranting reopening of previously disallowed claim when it is relevant to and probative of issue at hand and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome. 38 U.S.C.A. § 5108.—*Goodsell v. Brown*, 5 Vet.App. 36.—Armed S 134.

Vet.App. 1993. For purposes of reopening previously denied claim, evidence is "new" if it is not merely cumulative of evidence already in the record, and is "material" if it is relevant to and probative of issue at hand and there is no reasonable possibility that the new evidence, when viewed in the context of all the evidence, both new and old, would change the outcome. (Non-precedential disposition.)—*Franko v. Brown*, 4 Vet.App. 502.—Armed S 134.

Vet.App. 1993. Evidence is "material," warranting reopening of previously disallowed claim, if it is relevant to and probative of issue at hand and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome. (Non-precedential disposition.) 38 U.S.C.A. § 5108.—*Taylor v. Brown*, 4 Vet.App. 473.—Armed S 134.

Vet.App. 1993. For purposes of reopening previously disallowed claim, evidence is "material," when it is relevant to and probative of issue at hand and there is reasonable probability that new evidence, when viewed in context of all evidence, both

old and new, would change the outcome.—*Bernard v. Brown*, 4 Vet.App. 384.—Armed S 134.

Vet.App. 1993. Evidence is "material" warranting reopening of previously disallowed claim when it is relevant to and probative of issue at hand and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change the outcome. (Non-precedential disposition.) 38 U.S.C.A. § 5108.—*Forrest v. Brown*, 4 Vet.App. 276.—Armed S 134.

Vet.App. 1993. Evidence is "material" warranting reopening of previously disallowed claim if it is relevant to and probative of issue at hand and there is a reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change the outcome. (Non-precedential disposition.) 38 U.S.C.A. §§ 5108, 7104(b).—*Mins-hall v. Brown*, 4 Vet.App. 195.—Armed S 134.

Vet.App. 1993. Evidence is "material" so as to warrant reopening of previously disallowed claim if it is relevant and probative and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change the outcome. (Non-precedential disposition.) 38 U.S.C.A. §§ 5108, 7104(b).—*Ashley v. Principi*, 4 Vet.App. 75.—Armed S 134.

Vet.App. 1993. For new evidence to be "material" for purposes of reopening previously disallowed claims, evidence must be relevant and probative, and there must be reasonable possibility that new evidence, when viewed in context of all evidence, both old and new, would change outcome.—*Rowell v. Principi*, 4 Vet.App. 9.—Armed S 134.

Vet.App. 1992. A previously disallowed claim may be reopened, and the entire record reviewed, only if the evidence submitted by claimant is found to be both "new" and "material." 38 U.S.C.A. §§ 5108, 7104(b).—*Stephens v. Principi*, 3 Vet.App. 513.—Armed S 134.

Vet.App. 1992. For purposes of reopening a claim, "material" evidence is relevant to and probative of the issue at hand.—*Justus v. Principi*, 3 Vet.App. 510.—Armed S 134.

Vet.App. 1992. Evidence is "material" warranting reopening of previously disallowed claim when it is relevant and probative and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change the outcome. (Non-precedential disposition.) 38 U.S.C.A. §§ 5108, 7104(b).—*Chisholm v. Principi*, 3 Vet.App. 420.—Armed S 134.

Vet.App. 1992. Evidence is "material" warranting reopening of previously disallowed claim if it is relevant and probative and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome. (Non-precedential disposition). 38 U.S.C.A. §§ 5108, 7104(b).—*Bellavance v. Principi*, 3 Vet.App. 402.—Armed S 134.

Vet.App. 1992. Evidence is "material" warranting reopening of previously disallowed claim if it is relevant and probative and there is reasonable pos-

sibility that the new evidence, when viewed in context of all evidence, both new and old, would change outcome. (Non-precedential disposition). 38 U.S.C.A. § 5108.—*Smith v. Principi*, 3 Vet.App. 378, reconsideration denied 4 Vet.App. 131, appeal granted 5 Vet.App. 18, reversed 35 F.3d 1516.—Armed S 134.

Vet.App. 1992. For evidence to be “material” so as to warrant reopening of previously disallowed claim, it must be relevant and probative and there must be reasonable possibility that the new evidence, when viewed in context of all evidence, both new and old, would change the outcome. (Non-precedential disposition). 38 U.S.C.A. §§ 5108, 7104(b).—*Stoneking v. Derwinski*, 3 Vet.App. 103.—Armed S 134.

Vet.App. 1992. For evidence to be “material” warranting reopening of previously disallowed claim, it must be relevant and probative and there must be reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change the outcome. (Non-precedential disposition). 38 U.S.C.A. §§ 5108, 7104(b).—*Miller v. Derwinski*, 3 Vet.App. 90.—Armed S 134.

Vet.App. 1992. For evidence to be “material” warranting reopening of previously disallowed claim, it must be relevant and probative and there must be reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome. (Non-precedential disposition). 38 U.S.C.A. §§ 5108, 7104(b).—*St. Arbor v. Derwinski*, 3 Vet.App. 81.—Armed S 134.

Vet.App. 1992. Evidence is “new” if it is not merely cumulative and is “material,” so as to warrant reopening of previously disallowed claim, where there is reasonable possibility that the new evidence, when viewed in context of all the evidence, would change the outcome. (Non-precedential disposition).—*Poe v. Derwinski*, 3 Vet.App. 55.—Armed S 134.

Vet.App. 1992. Evidence is “material” so as to warrant reopening of previously disallowed claim if relevant and probative and if there is reasonable possibility that the evidence, when viewed in context of all the evidence, both old and new, would change the outcome. 38 U.S.C.A. §§ 5108, 7104(b).—*Bartow v. Derwinski*, 2 Vet.App. 657.—Armed S 134.

Vet.App. 1992. Evidence submitted to reopen previously disallowed claim is “material” if there is reasonable possibility that new evidence, viewed in context of old, would change outcome.—*Smith v. Derwinski*, 2 Vet.App. 217.—Armed S 134.

Vet.App. 1992. Evidence is “material,” for purposes of reopening claim, if there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome. 38 U.S.C.A. § 7104(b).—*Masors v. Derwinski*, 2 Vet.App. 181.—Armed S 134.

Vet.App. 1991. For purposes of rule that veteran may have claim reopened and reconsidered on

merits only upon submission of new and material evidence, evidence is considered “new” when it is not merely cumulative of other evidence on the record and is considered “material” when it is relevant and probative of issue at hand and there is reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome.—*Robie v. Derwinski*, 1 Vet.App. 612.—Armed S 134.

Vet.App. 1991. For purposes of statute permitting reopening of claim if veteran submits new and material evidence, the word “material” means there must be reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome.—*Sagainza v. Derwinski*, 1 Vet.App. 575, reconsideration denied 2 Vet.App. 341.—Armed S 134.

N.D.Ala. 1999. Even assuming that case report prepared by Alabama Bureau of Investigation (ABI) and documentary evidence that state was investigating two other suspects in connection with murder were exculpatory or impeaching and were suppressed by prosecution, case report and documentary evidence were not “material,” so as to require disclosure to defendant under *Brady*, where there was almost no likelihood that disclosures of materials would have had any significant impact on trial.—*Johnson v. Nagle*, 58 F.Supp.2d 1303, affirmed 256 F.3d 1156, rehearing and rehearing denied 273 F.3d 1123, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208.—Crim Law 700(3), 700(4).

N.D.Ala. 1999. Question for determining whether evidence is “material” under *Brady* decision requiring disclosure of exculpatory or impeaching evidence to the defense is not whether defendant would more likely than not have received a different verdict with evidence, but whether in its absence he received a “fair trial,” understood as a trial resulting in verdict worthy of confidence.—*Johnson v. Nagle*, 58 F.Supp.2d 1303, affirmed 256 F.3d 1156, rehearing and rehearing denied 273 F.3d 1123, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208.—Crim Law 700(2.1), 700(4).

N.D.Ala. 1997. In order for evidence to warrant relief under *Brady*, it must be “material,” that is, there must be reasonable probability that result of trial would have been different if evidence had been disclosed prior to trial.—*U.S. v. Chandler*, 957 F.Supp. 1505, affirmed in part, vacated in part, remanded 193 F.3d 1297, rehearing granted, vacated, on rehearing 218 F.3d 1305, certiorari denied 121 S.Ct. 1217, 531 U.S. 1204, 149 L.Ed.2d 129.—Crim Law 700(2.1).

S.D.Ala. 1996. Fact is “material,” for purposes of summary judgment motion, if it might affect outcome of suit under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Morrison Restaurants, Inc. v. U.S.*, 918 F.Supp. 1506, vacated and remanded 118 F.3d 1526, rehearing and suggestion for rehearing denied 132 F.3d 48.—Fed Civ Proc 2470.1.

E.D.Ark. 1972. Misstatement of fact or nondisclosure is considered “material,” within rule declar-

ing unlawful such misstatement or nondisclosure in connection with purchase or sale of securities, if it concerns something that a reasonable man would consider important in deciding what he should do in a particular transaction and encompasses those facts which in reasonable or objective contemplation might affect the value of the corporation's stock or securities; and substantially the same test of materiality applies under Arkansas Securities Law. Ark.Stats. § 67-1256(a) (2); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l (2).—Lane v. Midwest Bancshares Corp., 337 F.Supp. 1200.—Sec Reg 60.28(11), 278.

C.D.Cal. 2002. For debtor's false statement or omission to be "material," as required to support denial of her discharge based on her "false oath," false statement or omission must bear a relationship to debtor's business transactions or estate, or must concern the discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Guadarrama, 284 B.R. 463.—Bankr 3282.1.

C.D.Cal. 2002. Debtor's false statement or omission is "material," as required to support denial of her discharge based on her "false oath," if it concerns information that would aid in understanding debtor's financial affairs. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Guadarrama, 284 B.R. 463.—Bankr 3282.1.

C.D.Cal. 2002. False statement or omission need not be of a type that will harm or prejudice creditors in order to be "material," and to support denial of debtor's discharge based upon her "false oath." Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Guadarrama, 284 B.R. 463.—Bankr 3282.1.

C.D.Cal. 2002. Debtor's false statement or omission is "material," as required to support denial of her discharge based on her "false oath," if it concerns debtor's ability to acquire assets or tends to assure the bankruptcy forum which debtor desires, if it affects trustee's ability to determine debtor's eligibility for discharge, or if it aids in understanding debtor's financial affairs and transactions. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Guadarrama, 284 B.R. 463.—Bankr 3282.1.

C.D.Cal. 2002. Chapter 7 debtor's knowing use of false social security number upon her bankruptcy petition was in nature of "material" misstatement, of kind which would have provided basis to deny her discharge based on her "false oath," and which thus supported revocation of her discharge as having been obtained through fraud, though debtor had not incurred any prepetition debt using her true, undisclosed social security number, so that her misstatement did not prevent any creditor from identifying her as its debtor. Bankr.Code, 11 U.S.C.A. § 727(a)(4), (d)(1).—In re Guadarrama, 284 B.R. 463.—Bankr 3282.1, 3321.

C.D.Cal. 2000. A statement is "material" for securities fraud purposes if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the

investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5 et seq.—In re 2TheMart.com, Inc. Securities Litigation, 114 F.Supp.2d 955.—Sec Reg 60.28(11), 60.46.

C.D.Cal. 2000. Nondisclosed fact that promoters of e-commerce auction web site had not yet entered into a contract to design and build the web site was "material" for securities fraud purposes, and plaintiffs sufficiently alleged that defendants' statements that the web site was in "development" and that they "expected" to have the web site up and running by the end of the second quarter were material, where complaint stated, supported by a newspaper article, that the statements had a demonstrated effect on corporation's stock price. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5 et seq.—In re 2TheMart.com, Inc. Securities Litigation, 114 F.Supp.2d 955.—Sec Reg 60.28(13), 60.53.

C.D.Cal. 1998. Government's knowing use of false testimony is "material" if there is any reasonable likelihood that the false testimony, coupled with the evidence properly presented at trial, could have affected the judgment of the jury. U.S.C.A. Const.Amend. 5.—U.S. v. Zuno-Arce, 25 F.Supp.2d 1087, affirmed 209 F.3d 1095, dissenting opinion 245 F.3d 1108, mandate stayed 271 F.3d 953, publication ordered.—Crim Law 706(2).

C.D.Cal. 1998. Evidence is "material" in context of *Brady-Bagley* claim only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; "reasonable probability" is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 5.—U.S. v. Zuno-Arce, 25 F.Supp.2d 1087, affirmed 209 F.3d 1095, dissenting opinion 245 F.3d 1108, mandate stayed 271 F.3d 953, publication ordered.—Crim Law 700(2.1).

C.D.Cal. 1996. Misrepresentations will be considered "material," for purposes of Securities Exchange Act § 10(b) and Rule 10b-5, if disclosure would alter "total mix" of facts available to investor and if there was substantial likelihood that reasonable shareholder would consider it important to investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—Marksman Partners, L.P. v. Chantal Pharmaceutical Corp., 927 F.Supp. 1297.—Sec Reg 60.46.

C.D.Cal. 1993. Factual dispute is "material" for purposes of summary judgment only if it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Yorkshire v. I.R.S., 829 F.Supp. 1198, affirmed 26 F.3d 942, certiorari denied S & P Co. v. Yorkshire, 115 S.Ct. 487, 513 U.S. 989, 130 L.Ed.2d 399.—Fed Civ Proc 2470.1.

C.D.Cal. 1990. Dispute is "material," for summary judgment purposes, only if it can reasonably be resolved in favor of either party at trial. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Hadady Corp. v. Dean Witter Reynolds, Inc., 739 F.Supp. 1392.—Fed Civ Proc 2470.1.

C.D.Cal. 1983. Information is “material” if there is substantial likelihood that reasonable investor would consider the information important in making investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—S.E.C. v. Lund, 570 F.Supp. 1397.—Sec Reg 60.28(11).

C.D.Cal. 1971. Where alleged misrepresentation in press release did not appear, from record on motion for preliminary injunction, to have any significant propensity to affect voting process, it was not, for purposes of such motion, “material” misrepresentation within purview of Securities and Exchange Commission rule prohibiting use, in proxy solicitations, of statements which are false or misleading in respect to material facts. Securities Exchange Act of 1934, § 1 et seq., 15 U.S.C.A. § 78a et seq.—First Sur. Corp. v. Community Bank, 337 F.Supp. 667.—Corp 198(3); Sec Reg 178.1.

E.D.Cal. 1998. If particular statement has substantial impact on decision-making process or produces substantial tax benefit to taxpayer, matter is properly regarded as “material” within meaning of Internal Revenue Code section providing for penalties against tax advisors who make false representations regarding material tax matters. 26 U.S.C.A. § 6700.—U.S. v. Estate Preservation Services, 38 F.Supp.2d 846, affirmed 202 F.3d 1093.—Int Rev 5219.60.

E.D.Cal. 1997. In general, misrepresentation in insurance application is “material” under California law where answers, had they been true, would have affected insurer’s decision to accept risk of insurance at premium price agreed to. West’s Ann.Cal. Ins.Code §§ 359, 360, 10380.—Security Life Ins. Co. of America v. Meyling, 954 F.Supp. 1421, reversed 146 F.3d 1184, amended on denial of rehearing.—Insurance 2958.

E.D.Cal. 1996. Party opposing summary judgment must demonstrate that fact in contention is “material,” that is, that it might affect outcome of suit under governing law, and that dispute is “genuine,” that is, that evidence is such that reasonable jury could return verdict for nonmoving party.—Clark v. County of Placer, 923 F.Supp. 1278.—Fed Civ Proc 2470.1, 2544.

E.D.Cal. 1994. Rule of Criminal Procedure providing for discovery from government of “material” documents and tangible objects was not intended to impose completely redundant discovery obligation. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Liquid Sugars, Inc., 158 F.R.D. 466.—Crim Law 627.6(2).

E.D.Cal. 1994. Information constituting foundation for test results, which government must establish when it first puts expert on stand at trial in which scientific methodology or data is involved in proving defendant’s guilt, is essential element of government’s case-in-chief and, thus, is “helpful to the defense,” within meaning of rule providing for discovery from government of “material” documents and tangible objects. Fed.Rules Cr.Proc. Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Liquid Sugars, Inc., 158 F.R.D. 466.—Crim Law 627.6(3).

E.D.Cal. 1991. Party opposing summary judgment motion must demonstrate that fact in contention is “material,” i.e., a fact that might effect outcome of suit under governing law, and that dispute is genuine, i.e., evidence is such that reasonable jury could return verdict for nonmoving party.—U.S. v. Angle, 760 F.Supp. 1366, reversed Wackerman Dairy, Inc. v. Wilson, 7 F.3d 891.—Fed Civ Proc 2470.1.

N.D.Cal. 2001. In the context of the defense of inequitable conduct, generally, a reference is “material” if there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent.—Intel Corporation v. VIA Technologies, Inc., 176 F.Supp.2d 991.—Pat 97.

N.D.Cal. 2000. In the context of a share exchange, an omitted or misstated fact challenged under Securities Act provision barring misrepresentations and omissions in registration statement is “material” if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Securities Act of 1933, § 11(a), 15 U.S.C.A. § 77k(a).—In re McKesson HBOC, Inc. Securities Litigation, 126 F.Supp.2d 1248.—Sec Reg 25.21(3).

N.D.Cal. 2000. Determination of whether information possessed by inside trader of securities was “material,” for purposes of liability under § 10(b) and Rule 10b-5, depends on significance reasonable investor would place on withheld or misrepresented information. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—S.E.C. v. Truong, 98 F.Supp.2d 1086.—Sec Reg 60.28(11).

N.D.Cal. 2000. Misrepresentation or omission of reference is “material,” for purpose of determining existence of inequitable conduct, if reasonable patent examiner would find reference to be important in deciding whether or not to issue patent.—Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, 96 F.Supp.2d 1006.—Pat 97.

N.D.Cal. 1999. Evidence withheld by government is “material,” for purposes of determining if failure to disclose evidence to defense violated due process, if there is reasonable probability that, had evidence been disclosed, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 14.—Odlé v. Calderon, 65 F.Supp.2d 1065.—Crim Law 700(2.1).

N.D.Cal. 1998. Evidence is “material,” for purposes of requirement that prosecution disclose material and favorable evidence to the defense, if there is reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different.—Cheung v. Maddock, 32 F.Supp.2d 1150.—Crim Law 700(2.1).

N.D.Cal. 1998. Under California law, to determine if policy may be rescinded because misrepresentation on insurance application is “material,” if insurer would not have issued policy but for misrepresentation, misrepresentations are material; fur-

ther, fact that insurer has demanded answers to specific questions in application for insurance is, in itself, usually sufficient to establish materiality as matter of law.—*Casey By and Through Casey v. Old Line Life Ins. Co. of America*, 996 F.Supp. 939.—Insurance 2958.

N.D.Cal. 1995. To determine if policy may be rescinded because misrepresentation on insurance application is “material,” if insurer would not have issued policy but for misrepresentation, misrepresentations are material; further, fact that insurer has demanded answers to specific questions in application for insurance is, in itself, usually sufficient to establish materiality of matter of law.—*Trinh v. Metropolitan Life Ins. Co.*, 894 F.Supp. 1368.—Insurance 2958, 2985.

N.D.Cal. 1992. In determining whether information allegedly omitted from prospectus issued pursuant to initial public offering of stock was “material,” court must do more than determine materiality of each specific fact; court must also determine materiality of inferences which may properly be drawn from facts as whole.—*In re Keegan Management Co., Securities Litigation*, 794 F.Supp. 939.—Sec Reg 25.62(4).

N.D.Cal. 1984. It is not the law that any kind of information which, unrelated to economic value or financial performance, bears on the resources, motives, incentives or bargaining positions of buyers/sellers of securities is “material” for purpose of securities antifraud rule 10b-5 and adoption of such concept would jeopardize routine arbitrage transactions, which are themselves important instruments in promoting the optimum functioning of markets and allocation of resources, and would open the door to abuse in an area of litigation in which the potential for abuse is widely acknowledged. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Grigsby v. CMI Corp.*, 590 F.Supp. 826, affirmed 765 F.2d 1369.—Sec Reg 60.28(11).

D.Colo. 1998. An omission is “material,” for purposes of Securities Act prohibition on material misrepresentations or omissions in registration statements, if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of information made available. Securities Act of 1933, § 11, 15 U.S.C.A. § 77k.—*Schaffer v. Evolving Systems, Inc.*, 29 F.Supp.2d 1213.—Sec Reg 25.21(3).

D.Colo. 1998. Evidence is “material,” as required for prosecutor’s failure to disclose it to defense to constitute due process violation, only if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different, and a “reasonable probability” for such purpose is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 5.—*U.S. v. Kennedy*, 29 F.Supp.2d 662, affirmed, appeal dismissed 225 F.3d 1187, rehearing en banc denied, certiorari denied 121 S.Ct. 1406, 532 U.S. 943, 149 L.Ed.2d 348.—Const Law 268(5).

D.Colo. 1998. To satisfy the materiality element of both a false registration statement claim and a securities fraud claim, a plaintiff must allege facts showing that the defendant made an untrue statement of material fact, or failed to state a material fact necessary to make the statements that were made not misleading; a statement or omission is “material” only if a reasonable investor would consider it important in determining whether to buy or sell stock. Securities Act of 1933, § 11, 15 U.S.C.A. § 77k; Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Schwartz v. Celestial Seasonings, Inc.*, 178 F.R.D. 545.—Sec Reg 25.21(3), 60.28(11), 60.46.

D.Colo. 1995. For summary judgment purposes, “material” fact is one that might affect outcome of suit under the governing law. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Kuehl v. Wal-Mart Stores, Inc.*, 909 F.Supp. 794.—Fed Civ Proc 2470.1.

D.Colo. 1995. Factual dispute is “material,” for purposes of summary judgment, only if, under governing law, its resolution might affect action’s outcome. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Conway v. U.S.*, 903 F.Supp. 1409.—Fed Civ Proc 2470.1.

D.Colo. 1995. Factual dispute, as will potentially preclude summary judgment, is “material” only if, under governing law, its resolution might affect action’s outcome, and is “genuine” only if reasonable fact finder could return verdict for nonmoving party.—*RX Pharmacies Plus, Inc. v. Weil*, 883 F.Supp. 549.—Fed Civ Proc 2470.1.

D.Colo. 1994. On motion for summary judgment, factual dispute is “material” only if, under governing law, its resolution might affect action’s outcome. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Miles v. Martin Marietta Corp.*, 861 F.Supp. 73.—Fed Civ Proc 2470.1.

D.Colo. 1994. For purposes of motion for summary judgment, factual dispute is “material” only if, under governing law, its resolution might affect action’s outcome; factual dispute is “genuine” only if reasonable fact finder could return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Galusha v. Farmers Ins. Exchange*, 844 F.Supp. 1401.—Fed Civ Proc 2470.1.

D.Colo. 1993. Factual dispute is “material” for purposes of motion for summary judgment only if, under governing law, its resolution might affect action’s outcome. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Colorado & Eastern R.R.*, 832 F.Supp. 304.—Fed Civ Proc 2470.1.

D.Colo. 1993. Evidence is “material” for purposes of *Brady* only if there is reasonable probability that, had evidence been disclosed, result of proceeding would have been different, and “reasonable probability” is probability sufficient to undermine confidence in outcome of the proceeding.—*U.S. v. Kennedy*, 819 F.Supp. 1510, affirmed *U.S. v. Byron*, 994 F.2d 747.—Crim Law 700(2.1).

D.Colo. 1992. On motion for summary judgment, factual dispute is “material” only if, under

governing law, its resolution might affect action's outcome; factual dispute is "genuine" only if reasonable fact finder could return verdict for not moving party. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Muck v. U.S.*, 791 F.Supp. 817, affirmed 3 F.3d 1378, rehearing denied.—Fed Civ Proc 2470.1.

D.Colo. 1992. Factual dispute is "material", on motion for summary judgment, only if, under governing law, its resolution might affect action's outcome.—*Bonger v. American Water Works*, 789 F.Supp. 1102.—Fed Civ Proc 2470.1.

D.Colo. 1984. Under Colorado law governing strict liability for misrepresentation of product, fact is "material" if reasonably prudent member of public under circumstances would attach importance to it in determining his or her course of action.—*Hawkinson v. A.H. Robins Co., Inc.*, 595 F.Supp. 1290.—Prod Liab 7.

D.Conn. 2001. Letter to employee from employer's vice president of human resources, which mistakenly informed employee that he would be eligible for retiree medical benefits when he reached age 55, was not a "material" misrepresentation, as required to support employee's breach of fiduciary duty claim under ERISA, even if employee relied on letter in signing a release agreement after his termination; letter also stated that specific terms and conditions of retiree medical benefit plan had not been decided. Employee Retirement Income Security Act of 1974, § 404(a), 29 U.S.C.A. § 1104(a).—*Danis v. Cultor Food Science, Inc.*, 154 F.Supp.2d 247.—Pensions 47.

D.Conn. 1999. Under Connecticut law, a misrepresentation is "material," so as to render a policy voidable, when, in the judgment of reasonably careful and intelligent persons, it would so increase the degree or character of the risk of the insurance as to substantially influence its issuance, or substantially affect the rate of premium.—*Ranger Ins. Co. v. Kovach*, 63 F.Supp.2d 174.—Insurance 2958.

D.Conn. 1999. Under Rule 10b-5, information is "material" only if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Ganino v. Citizens Utilities Co.*, 56 F.Supp.2d 222, reversed in part, vacated in part 228 F.3d 154.—Sec Reg 60.28(11), 60.46.

D.Conn. 1999. Information is "material," for purposes of requirement that insiders in possession of "material" inside information either disclose it or refrain from trading, if a reasonable shareholder would be substantially likely to consider it important. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Itoba Ltd. v. LEP Group PLC*, 32 F.Supp.2d 516.—Sec Reg 60.28(11).

D.Conn. 1996. For purposes of government's Fourteenth Amendment due process obligation to

turn over evidence in its possession that is both favorable to accused and material to guilt or punishment, evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—*Kelly v. Meachum*, 950 F.Supp. 461.—Const Law 268(5).

D.Conn. 1995. Information is "material" for purposes of statute proscribing trades on basis of material nonpublic information concerning pending tender offer acquired from insider or issuer or someone working on their behalf, if there is substantial likelihood that reasonable investor would have regarded this nonpublic information as important to his or her investment decision. Securities Exchange Act of 1934, § 14(e), as amended, 15 U.S.C.A. § 78n(e); 17 C.F.R. § 240.14e-3(a).—*S.E.C. v. Mayhew*, 916 F.Supp. 123, affirmed and remanded 121 F.3d 44.—Sec Reg 60.46.

D.Conn. 1995. To defeat properly supported motion for summary judgment, factual issue must be both "genuine" and "material"; factual issue is not "genuine" unless evidence is such that reasonable jury could return verdict for nonmoving party, and is not "material" unless it might affect outcome of suit under governing law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Omega Engineering, Inc. v. Eastman Kodak Co.*, 908 F.Supp. 1084.—Fed Civ Proc 2470.1.

D.Conn. 1995. Factual issue is not "material" for summary judgment purposes unless it might affect outcome of suit under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Larkin v. Town of West Hartford*, 891 F.Supp. 719, affirmed 101 F.3d 109.—Fed Civ Proc 2470.1.

D.Conn. 1995. Factual dispute as to amount of income taxes paid was not "material," for summary judgment purposes, where issue was whether refund claim was timely filed. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Katz v. U.S.*, 885 F.Supp. 24.—Fed Civ Proc 2514.

D.Conn. 1994. If there is clear and convincing evidence that applicant withheld material information from the Patent and Trademark Office (PTO) intending to affect allowance of claims, patent would be unenforceable, and information is "material" for this purpose if there is substantial likelihood that reasonable examiner would consider it important in deciding whether to allow patent to issue.—*Rogers Corp. v. Arlon, Inc.*, 855 F.Supp. 560.—Pat 97.

D.Conn. 1994. Allegations that general partner of limited partnership was terminated from his prior employment for professional dishonesty and that he continued the same course of dishonest conduct as general partner were directly related to partner's fitness to promote and manage limited partnerships, and therefore were "material" under fraud definition of materiality as to information omitted from private placement memoranda (PPMs) for limited partnerships. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*In re Colonial Ltd. Partnership Litigation*, 854 F.Supp. 64.—Sec Reg 60.28(13).

D.Conn. 1993. Erroneous exclusion of evidence is "material" and rises to level of constitutional error if omitted evidence would have created reasonable doubt that did not otherwise exist. U.S.C.A. Const.Amend. 6, 14.—*Flanders v. Meachum*, 824 F.Supp. 290, reversed 13 F.3d 600, rehearing denied 22 F.3d 48.—Crim Law 382, 1162.

D.Conn. 1992. Information concerning misrepresentation or omission is "material," as needed to establish securities fraud claim under § 10(b), if disclosure of information would alter total mix of facts available to investor and if there is substantial likelihood that reasonable shareholder would consider information important to investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Ferber v. Travelers Corp.*, 802 F.Supp. 698.—Sec Reg 60.28(11).

D.Del. 2002. Fact that oxygen plasma treatment had been used successfully in single clinical test was not "material" to determination by examiner for Patent and Trademark Office (PTO) regarding patentability of invention relating to monomer for making contact lenses and contact lens materials, since reasonable examiner would not have considered it important in determining patentability; test did not establish that plasma treatment was necessary to achieve successful lens, test did not establish that treatment was effective as along term solution, and plasma treatment was known to those skilled in the art at time of filed application. 37 C.F.R. § 1.56(a).—*Wesley Jessen Corp. v. Bausch & Lomb, Inc.*, 209 F.Supp.2d 348, affirmed 56 Fed. Appx. 503.—Pat 97.

D.Del. 2002. Information is "material," for purpose of determining whether its nondisclosure to patent examiner was inequitable conduct, if there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as patent.—*Applera Corp. v. Micromass UK Ltd.*, 204 F.Supp.2d 724, affirmed 60 Fed.Appx. 800.—Pat 97.

D.Del. 2002. Information concealed from Patent and Trademark Office is "material" when there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as patent; reference is not material if it is not as relevant as that actually considered by examiner or if it is merely cumulative of information considered by examiner.—*Cordis Corp. v. Medtronic AVE, Inc.*, 194 F.Supp.2d 323, reconsideration denied, reconsideration granted in part 2002 WL 1022509.—Pat 97.

D.Del. 2001. Prior art reference is deemed "material," for purpose of determining whether its withholding from patent examiner amounts to inequitable conduct, if there is substantial likelihood that reasonable examiner would consider it important in deciding whether to allow application to issue as patent.—*Creo Products, Inc. v. Presstek, Inc.*, 166 F.Supp.2d 944, affirmed 305 F.3d 1337.—Pat 97.

D.Del. 2001. Allegation that corporation failed to disclose that financing commitment letters would

expire prior to planned consummation of merger was sufficient to allege "material" omission, despite existence of accompanying disclaimers as to certainty and necessity for financing, for purpose of stating securities fraud claim. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Sheehan v. Little Switzerland, Inc.*, 136 F.Supp.2d 301.—Sec Reg 60.28(15).

D.Del. 2000. A misleading statement or omission is "material," for purposes of establishing securities fraud under § 10(b), if there is a substantial likelihood that the reasonable investor would have viewed the statement or omission as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Tse v. Ventana Medical Systems, Inc.*, 123 F.Supp.2d 213, affirmed 297 F.3d 210.—Sec Reg 60.28(11), 60.46.

D.Del. 2000. Information is deemed "material," and thus must be disclosed by patent applicant, if there is substantial likelihood that reasonable examiner would have considered material important in deciding whether to issue application as patent. 37 C.F.R. § 1.56(a).—*LifeScan, Inc. v. Home Diagnostics, Inc.*, 103 F.Supp.2d 379, affirmed 13 Fed.Appx. 940.—Pat 97.

D.Del. 1999. Under Delaware law, misrepresentation is "material" if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.—*American Life Ins. Co. v. Parra*, 63 F.Supp.2d 480, affirmed in part, reversed in part 265 F.3d 1054, on remand 187 F.Supp.2d 203, affirmed 50 Fed.Appx. 538.—Fraud 18.

D.Del. 1999. For purposes of establishing a *Brady* violation, evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const. Amend. 14.—*Gattis v. Snyder*, 46 F.Supp.2d 344, affirmed 278 F.3d 222, certiorari denied 123 S.Ct. 660, 154 L.Ed.2d 524.—Crim Law 700(2.1).

D.Del. 1999. Misstated or omitted fact is deemed "material" if it could reasonably be considered as affecting insurer's decision to enter into contract, its evaluation of risk, its calculation of risk, or its calculation of premium to be charged.—*Brasure v. Optimum Choice Ins. Co.*, 37 F.Supp.2d 340.—Insurance 2958, 2964.

D.Del. 1993. Fact is "material" for summary judgment purposes if it might affect outcome of litigation under applicable law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Haft v. Dart Group Corp.*, 841 F.Supp. 549.—Fed Civ Proc 2470.1.

D.Del. 1992. Omitted fact or misleading statement is "material," for purposes of securities fraud claim, if there is substantial likelihood that, under all the circumstances, omitted fact would have assumed actual significance in deliberations of reasonable shareholder. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—In re Del-

marva Securities Litigation, 794 F.Supp. 1293.—Sec Reg 60.28(11).

D.Del. 1991. For purposes of summary judgment motion, dispute over facts is “material” if, under substantive law, it would affect outcome of suit; factual dispute is “genuine” if reasonable jury could return verdict for nonmovant. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Diltz v. U.S., 771 F.Supp. 95.—Fed Civ Proc 2470.1.

D.Del. 1991. Issue of fact is “material,” for purposes of summary judgment motion, if, under substantive law of case, resolution of factual dispute could affect outcome of case. Fed.Rules Civ.Proc. Rule 56(e), 28 U.S.C.A.—Anthes v. Transworld Systems, Inc., 765 F.Supp. 162.—Fed Civ Proc 2470.1.

D.Del. 1966. Competitor which asserted that patent holder suing for infringement had perpetrated fraud on patent office in order to obtain the patent had burden of establishing not only that misrepresentation to patent examiner was intentional but also that it was “material”, i. e., that patent would not have been issued but for the fraud.—Corning Glass Works v. Anchor Hocking Glass Corp., 253 F.Supp. 461, affirmed in part, reversed in part 374 F.2d 473, certiorari denied 88 S.Ct. 65, 389 U.S. 826, 19 L.Ed.2d 80, on remand 300 F.Supp. 1299.—Pat 97.

D.D.C. 2001. False statements or omissions are “material,” in securities fraud actions, if reasonable investor would consider them important. Securities Exchange Act of 1934, §§ 10(b), 14(a), 15 U.S.C.A. §§ 78j(b), 78n(a); 17 C.F.R. §§ 240.10B-5, 240.14A-9.—S.E.C. v. Pace, 173 F.Supp.2d 30.—Sec Reg 60.28(11), 60.46.

D.D.C. 2001. Transfer by chief executive officer (CEO) of surety company of \$36,659.28 to his personal account from company account was “material” and had to be disclosed in registration statement, annual report, or proxy, for purposes of security fraud claims, although amount was tiny fraction of company’s total premium income and less than the \$60,000 threshold for materiality established by Securities and Exchange Commission (SEC) Guidelines; company’s investors had a right to know and would reasonably consider it important that CEO was stealing any quantity of money from their company. Securities Exchange Act of 1934, §§ 10(b), 14(a), 15 U.S.C.A. §§ 78j(b), 78n(a); 17 C.F.R. §§ 240.10B-5, 240.14A-9.—S.E.C. v. Pace, 173 F.Supp.2d 30.—Sec Reg 25.21(3), 49.26(3), 60.28(14).

D.D.C. 1999. Information is “material,” for purpose of determining whether failure to disclose it warrants denial of enforcement of patent, when there is substantial likelihood that reasonable patent examiner would have considered information important in deciding whether to allow application to issue as patent.—Sigma-Tau Industrie Farmaceutiche Riunite, S.p.A. v. Lonza, Ltd., 62 F.Supp.2d 70.—Pat 97.

D.D.C. 1998. The potential risks and profitability of proposed trading program, offeror’s lack of

due diligence about the programs being offered, and the ability to “leverage” money by leasing Treasury securities were “material” facts, for purposes of securities fraud claims. Securities Act of 1933, § 17(a)(1), 15 U.S.C.A. § 77q(a)(1); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—S.E.C. v. Kenton Capital, Ltd., 69 F.Supp.2d 1.—Sec Reg 27.42, 60.28(13), 60.46.

D.D.C. 1998. As a general rule, alleged misrepresentations or omissions are “material” if reasonable investors would consider truthful disclosure of the information significant in making their investment decisions. Securities Act of 1933, § 17(a)(1), 15 U.S.C.A. § 77q(a)(1); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—S.E.C. v. Kenton Capital, Ltd., 69 F.Supp.2d 1.—Sec Reg 27.42, 60.28(11), 60.46.

D.D.C. 1996. Fact is “material,” for purposes of summary judgment motion, if its resolution would affect outcome of litigation. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—International Broth. of Painters and Allied Trades Union and Industry Pension Fund v. Duval, 925 F.Supp. 815.—Fed Civ Proc 2470.1.

D.D.C. 1994. Test for determining whether there has been disclosure of “material” risks, for purposes of determining whether patient has given informed consent to surgical procedure, is whether reasonable person, in what physician knows or should know to be patient’s position, would be likely to attach significance to risk or cluster of risks in deciding whether or not to forgo proposed therapy.—Randall v. U.S., 859 F.Supp. 22.—Health 908.

D.D.C. 1990. Disputes over characterization of facts that would not affect outcome of case under the law are not “material” within meaning of summary judgment rule. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Fire Fighters Ass’n, District of Columbia v. Barry, 742 F.Supp. 1182.—Fed Civ Proc 2470.1.

D.D.C. 1984. Contract breach which actually prevents further performance of contract or provides valid defense for party’s failure to continue performance would be considered “material.”—Greyhound Lines, Inc. v. Bender, 595 F.Supp. 1209.—Contracts 280(1).

D.D.C. 1981. Omitted fact is “material” for purposes of federal securities laws, if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote; it does not require proof of substantial likelihood that disclosure of omitted fact would have caused reasonable investor to change his vote, but rather, requires showing of substantial likelihood that, under all the circumstances, omitted fact would have assumed actual significance in deliberations or reasonable shareholder. Securities Exchange Act of 1934, § 14(e) as amended 15 U.S.C.A. § 78n(e).—Riggs Nat. Bank of Washington D. C. v. Allbritton, 516 F.Supp. 164.—Sec Reg 60.28(11).

M.D.Fla. 2001. As used in the context of charge of making false statements within jurisdiction of

federal agency, which requires showing of concealment of material fact, term "material" is defined as having natural tendency to influence or be capable of influencing a government function. 18 U.S.C.A. § 1001(a).—U.S. v. Evans, 149 F.Supp.2d 1331, reconsideration denied 157 F.Supp.2d 1290.—Fraud 68.10(4).

M.D.Fla. 2001. Statement made in certification signed by defendant, in his capacity as executive director for local housing authority, indicating that 100 percent of authority units inspected met housing quality standards, when in fact they did not, was not "material," and thus did not support conviction for making false statement within jurisdiction of federal agency, inasmuch as it was unrealistic that there would not be a problem with some unit somewhere within authority, and defendant's signing of certification was ministerial act. 18 U.S.C.A. § 1001(a).—U.S. v. Evans, 149 F.Supp.2d 1331, reconsideration denied 157 F.Supp.2d 1290.—Fraud 68.10(4).

M.D.Fla. 1999. In order to be "material," so as to justify rescission of an insurance policy under Florida law, a misrepresentation need not be one that would have caused the insurer to decline to issue the policy; rather, it must only be such that a truthful statement would put a careful insurer on notice that further inquiry was warranted to adequately gauge the risk of issuing a policy.—Mims v. Old Line Life Ins. Co. of America, 46 F.Supp.2d 1251.—Insurance 1968, 2958.

M.D.Fla. 1999. A false statement or omission will be considered "material," for securities fraud purposes under Rule 10b-5, if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Anderson v. Transglobe Energy Corp., 35 F.Supp.2d 1363.—Sec Reg 60.28(11), 60.46.

M.D.Fla. 1999. In the Eleventh Circuit, the subject matter of a false oath is "material," and thus sufficient to bar discharge, if it bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—Haught v. U.S., 242 B.R. 522.—Bankr 3282.1.

M.D.Fla. 1997. Representation that investment course product of real estate investment business was backed by "100% Unconditional Refund Guarantee" was "material" for purposes of mail fraud and wire fraud; representation might well convince reasonable person that he or she has nothing to lose by trying product that could make person "filthy rich," and representation was specific guarantee that purchaser risked nothing by sending money. 18 U.S.C.A. §§ 1341, 1343.—Matter of McCorkle, 972 F.Supp. 1423.—Postal 35(11.1); Tel 362.

M.D.Fla. 1996. Facts are "material" for summary judgment purposes if they will affect outcome

of trial under governing law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Ali v. City of Clearwater, 915 F.Supp. 1231, affirmed 138 F.3d 956.—Fed Civ Proc 2470.1.

N.D.Fla. 1997. Fact regarding marine insurance is "material," and thus must be disclosed by insured under federal doctrine of *uberrima fidei*, if it might have bearing on risk to be assumed by insurer.—Northfield Ins. Co. v. Barlow, 983 F.Supp. 1376.—Insurance 2996.

N.D.Fla. 1995. Issue of fact is "material" on motion for summary judgment if it might affect outcome of case under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—CSX Transp., Inc. v. City of Pensacola, Fla., 936 F.Supp. 880, reconsideration denied 936 F.Supp. 885.—Fed Civ Proc 2470.1.

N.D.Fla. 1994. An issue of fact is "material," for summary judgment purposes, if it might affect outcome of case under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Alderman v. Pacific Northern Victor, Inc., 887 F.Supp. 1495, affirmed 95 F.3d 1061.—Fed Civ Proc 2470.1.

N.D.Fla. 1994. For purposes of determining whether inference derived from fact creates "genuine" issue of "material" fact, so as to preclude summary judgment, issue is "genuine" if record taken as whole could lead rational trier of fact to find for nonmoving party, and "material" if it might affect outcome of case under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Pearson v. Ford Motor Co., 865 F.Supp. 1504, affirmed 68 F.3d 1301.—Fed Civ Proc 2470.1.

N.D.Fla. 1994. Issue of fact is "genuine" for purposes of precluding summary judgment if record as whole could lead to rational trier of fact to find for nonmoving party, while issue was "material" if it might affect outcome of the case under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Chatham Steel Corp. v. Brown, 858 F.Supp. 1130.—Fed Civ Proc 2470.1.

N.D.Fla. 1994. Issue of fact is "material" so as to preclude summary judgment if it might affect outcome of case under governing law, while it is "genuine" if record taken as whole could lead rational trier of fact to find for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Metric Systems Corp. v. McDonnell Douglas Corp., 850 F.Supp. 1568.—Fed Civ Proc 2470.1.

N.D.Fla. 1991. For purposes of summary judgment motion, issue is "genuine" only if record, taken as a whole, could lead rational trier of fact to find for nonmoving party, and is "material" if it might affect outcome of case. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Wilson v. U.S., 786 F.Supp. 1571.—Fed Civ Proc 2470.1.

S.D.Fla. 1999. Representation or omission sufficient to support violation of Federal Trade Commission Act (FTC Act) is "material" if it is of kind usually relied on by reasonably prudent person. Federal Trade Commission Act, § 5(a), as amended, 15 U.S.C.A. § 45(a).—Federal Trade Com'n v.

SlimAmerica, Inc., 77 F.Supp.2d 1263.—Trade Reg 763.1.

S.D.Fla. 1995. Fact is “material,” for summary judgment purposes, if it must be decided in order to resolve substantive claim or defense to which the motion is directed. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—F.T.C. v. Wilcox, 926 F.Supp. 1091.—Fed Civ Proc 2470.1.

S.D.Fla. 1993. Fact is “material,” and sufficient to oppose summary judgment motion, if fact is an essential element of cause of action.—Brass v. NCR Corp., 826 F.Supp. 1427.—Fed Civ Proc 2470.1.

S.D.Fla. 1993. Fact is “material,” making summary judgment inappropriate, if fact is essential element of cause of action. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Ayers v. American Tel. & Tel. Co., 826 F.Supp. 443.—Fed Civ Proc 2470.1.

S.D.Fla. 1992. Fact is “material,” for purposes of defeating summary judgment, if it constitutes legal defense to an action. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—United Van Lines, Inc. v. Shooster, 860 F.Supp. 826.—Fed Civ Proc 2470.1.

S.D.Fla. 1991. For purposes of summary judgment, a fact is “material” if it is an essential element of cause of action. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Rios v. Navarro, 766 F.Supp. 1158.—Fed Civ Proc 2470.1.

S.D.Fla. 1940. A concealment of facts regarding health of insured is “material” when the knowledge or ignorance of the fact involved would influence the judgment of insurer regarding issuance of policy.—Travelers Ins. Co. v. Wilkins, 33 F.Supp. 117, reversed 117 F.2d 646, certiorari denied 61 S.Ct. 1089, 313 U.S. 576, 85 L.Ed. 1533.—Insurance 3003(4).

N.D.Ga. 2002. For purposes of Rule 10b-5 claim, an omitted fact is “material” if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote; materiality is fulfilled when there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re Infocure Securities Litigation, 210 F.Supp.2d 1331.—Sec Reg 60.28(11).

N.D.Ga. 2001. A false statement or omission will be considered “material,” for purposes of federal securities laws, if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re S1 Corp. Securities Litigation, 173 F.Supp.2d 1334.—Sec Reg 60.28(11), 60.46.

N.D.Ga. 2001. Matters that are not material under federal securities laws because they are not so probable or relevant as to be required to be

disclosed in a particular context may be “material” if information about them is stated falsely or misleadingly in communications that are not otherwise required to be made. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re S1 Corp. Securities Litigation, 173 F.Supp.2d 1334.—Sec Reg 60.46.

N.D.Ga. 2001. Representations made regarding company’s merger, such as statements that integration costs were “ahead of schedule,” that merger would bring applications and resources complementing company’s product strategy and long-term “stability in a rapidly changing industry,” that company had taken “several bold steps” to distance itself from competition, that acquisitions were “complementary,” and that company had achieved “growth milestones,” were statements of vague puffing and corporate optimism, and thus were not “material” statements that would support securities fraud claims. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re S1 Corp. Securities Litigation, 173 F.Supp.2d 1334.—Sec Reg 60.27(3), 60.46.

N.D.Ga. 2001. Alleged misrepresentations regarding company’s merger with other entities, such as that merger could make company “dominant force in software,” that company was creating “world’s most complete financial portal solutions provider,” and that merger positioned company for “executing its long-term global strategy,” were too general and vague to be actionable and were not “material” under federal securities laws. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re S1 Corp. Securities Litigation, 173 F.Supp.2d 1334.—Sec Reg 60.27(3), 60.46.

N.D.Ga. 2001. Reference is “material” and required to be disclosed to patent examiner in course of patent application process when it discloses a more complete combination of relevant features, even if those features are before examiner in other references. 37 C.F.R. § 1.56.—North American Oil Co., Inc. v. Star Brite Distributing, Inc., 148 F.Supp.2d 1351, affirmed in part, vacated in part 46 Fed.Appx. 629.—Pat 97.

N.D.Ga. 2000. False statement or omission will be considered “material” for purposes of securities fraud claim if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re Theragenics Corp. Securities Litigation, 105 F.Supp.2d 1342.—Sec Reg 60.28(11), 60.46.

N.D.Ga. 2000. False statement or omission will be considered “material,” under Rule 10b-5, if its disclosure would alter the total mix of facts available to an investor and if there was a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. Securities Exchange Act of 1934, § 10(b), as amend-

ed, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Sturm v. Marriott Marquis Corp.*, 85 F.Supp.2d 1356.—Sec Reg 60.28(11), 60.46.

N.D.Ga. 1998. A false statement or omission will be considered “material,” for purposes of Securities Exchange Act § 10(b) liability, if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Carley Capital Group v. Deloitte & Touche, L.L.P.*, 27 F.Supp.2d 1324.—Sec Reg 60.28(11), 60.46.

N.D.Ga. 1998. A false statement or omission will be considered “material,” for purposes of Rule 10b-5 claim, if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. 17 C.F.R. § 240.10b-5.—*Sturm v. Marriott Marquis Corp.*, 26 F.Supp.2d 1358.—Sec Reg 60.28(11), 60.46.

N.D.Ga. 1998. Omission, if any, was “material” as to alleged failure of solicitation document for merger of limited partnership into new limited partnership to disclose that there might be no distributions to limited partners for several years following merger and that resale value of partnership units might be eliminated. 17 C.F.R. § 240.10b-5.—*Sturm v. Marriott Marquis Corp.*, 26 F.Supp.2d 1358.—Sec Reg 60.28(15).

N.D.Ga. 1998. Alleged failure to disclose, in solicitation document for merger of limited partnership into new limited partnership, that true value of hotel owned by partnership was \$300 million rather than up to \$255 million involved “material” omission, as element of Rule 10b-5 claim. 17 C.F.R. § 240.10b-5.—*Sturm v. Marriott Marquis Corp.*, 26 F.Supp.2d 1358.—Sec Reg 60.28(15).

N.D.Ga. 1998. A false statement or omission will be considered “material” as required for securities fraud claim, if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood that a reasonable shareholder would consider it important to the investment decision. 17 C.F.R. § 240.10b-5.—*In re Miller Industries, Inc. Securities Litigation*, 12 F.Supp.2d 1323.—Sec Reg 60.28(11), 60.46.

N.D.Ga. 1997. False statement or omission will be considered “material,” for purposes of securities fraud action, if its disclosure would alter total mix of facts available to investor, and if there is substantial likelihood that reasonable shareholder would consider it important to investment decision. Securities Exchange Act of 1934, § 10, as amended, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.—*In re ValuJet, Inc.*, 984 F.Supp. 1472.—Sec Reg 60.28(11), 60.46.

N.D.Ga. 1996. For purposes of summary judgment motion, fact is “material” when it is identified as such by controlling substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*McCullough v. At-*

lanta Beverage Co., 929 F.Supp. 1489.—Fed Civ Proc 2470.1.

N.D.Ga. 1996. For purposes of precluding summary judgment, issue is not “genuine” if it is unsupported by evidence or if it is created by evidence that is merely colorable or not significantly probative, and fact is not “material” unless it is identified by controlling substantive law as an essential element of nonmoving party’s case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Ellis v. Morehouse School of Medicine*, 925 F.Supp. 1529.—Fed Civ Proc 2470.1, 2546.

N.D.Ga. 1995. A fact is not “material,” for purposes of summary judgment rule, unless it is identified by controlling substantive law as an essential element of nonmoving party’s case. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Whillock v. Delta Air Lines, Inc.*, 926 F.Supp. 1555, affirmed 86 F.3d 1171.—Fed Civ Proc 2470.1.

N.D.Ga. 1995. For purposes of summary judgment motion, fact is “material” when it is identified as such by the controlling substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Ruble v. King*, 911 F.Supp. 1544.—Fed Civ Proc 2470.1.

N.D.Ga. 1995. For purposes of summary judgment motion, fact is “material” when it is identified as such by the controlling substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Holbrook v. City of Alpharetta, Georgia*, 911 F.Supp. 1524, affirmed 112 F.3d 1522.—Fed Civ Proc 2470.1.

N.D.Ga. 1995. Fact is not “material,” for purposes of summary judgment, unless it is identified by the controlling substantive law as essential element of nonmoving party’s case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Lewis v. Zilog, Inc.*, 908 F.Supp. 931.—Fed Civ Proc 2470.1.

N.D.Ga. 1995. Fact is not “material” for summary judgment purposes unless it is identified by the controlling substantive law as essential element of nonmovant’s case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Childree v. UAP/GA AG Chem, Inc.*, 892 F.Supp. 1554, affirmed in part, vacated in part, reversed in part 92 F.3d 1140, certiorari denied 117 S.Ct. 1080, 519 U.S. 1148, 137 L.Ed.2d 216.—Fed Civ Proc 2470.1.

N.D.Ga. 1995. For summary judgment purposes, fact is not “material” unless it is identified by controlling substantive law as essential element of nonmoving party’s case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*International Telecommunications Exchange Corp. v. MCI Telecommunications Corp.*, 892 F.Supp. 1520.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. For purposes of summary judgment motion, fact is “material” when it is identified as such by controlling substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Atakpa v. Perimeter OB-GYN Associates, P.C.*, 912 F.Supp. 1566.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. A fact is not “material,” for summary judgment purposes, unless it is identified by controlling substantive law as an essential element of nonmoving party’s case. Fed.Rules Civ.

Proc.Rule 56(c), 28 U.S.C.A.—*Poindexter v. American Bd. of Surgery, Inc.*, 911 F.Supp. 1510, affirmed 56 F.3d 1391.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. A fact is not “material,” for summary judgment purposes, unless it is identified by controlling substantive law as an essential element of nonmoving party’s case. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—*Dickson v. Amoco Performance Products, Inc.*, 910 F.Supp. 629.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. An issue of fact is “material,” for summary judgment purposes, if it is a legal element of the claim, as identified by substantive law governing case, such that its presence or absence might affect the outcome of the suit. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Plaisance v. Travelers Ins. Co.*, 880 F.Supp. 798, affirmed 56 F.3d 1391, certiorari denied 116 S.Ct. 338, 516 U.S. 931, 133 L.Ed.2d 236, rehearing denied 116 S.Ct. 585, 516 U.S. 1018, 133 L.Ed.2d 507.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. Fact is not “material” for summary judgment purposes unless it is identified by the controlling substantive law as essential element of nonmovant’s case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Grady v. Bunzl Packaging Supply Co.*, 874 F.Supp. 387.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. Fact is not “material,” for purpose of summary judgment motion, unless it is identified by controlling substantive law as essential element of nonmoving party’s case. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Servicetrends, Inc. v. Siemens Medical Systems, Inc.*, 870 F.Supp. 1042, opinion amended on reconsideration 1994 WL 776878.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. Although dispute existed as to whether there was oral modification of indemnity agreement, such dispute was not “material” for summary judgment purposes because, even if oral agreement did occur, oral modification was not effective since indemnity contract stated that it could not be changed or modified orally and provisions requiring written modification are valid and binding under Georgia law. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Transamerica Ins. Co. v. H.V.A.C. Contractors, Inc.*, 857 F.Supp. 969.—Fed Civ Proc 2492.

N.D.Ga. 1994. A fact is not “material,” for purposes of summary judgment, unless it is identified by controlling substantive law as an essential element of nonmovant’s case. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Ellis v. City of Fairburn, Ga.*, 852 F.Supp. 1568, reversed 50 F.3d 1039.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. Fact is “material” for summary judgment purposes when it is identified as such by the controlling substantive law; issue is “genuine” when evidence is such that reasonable jury could return a verdict for the nonmovant. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Novak v. Cobb County-Kennestone Hosp. Authority*, 849 F.Supp. 1559, affirmed 74 F.3d 1173.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. Fact is not “material,” for purposes of establishing genuine material issues of fact sufficient to preclude summary judgment, unless it is identified by controlling substantive law as an essential element of nonmoving party’s case. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Dickson v. Amoco Performance Products, Inc.*, 845 F.Supp. 1565.—Fed Civ Proc 2470.1.

N.D.Ga. 1993. Merely cumulative information is not “material” for purpose of duty to disclose information to Patent and Trademark Office (PTO).—*Quikrete Companies, Inc. v. Nomix Corp.*, 874 F.Supp. 1362, affirmed 34 F.3d 1078, rehearing denied.—Pat 97.

N.D.Ga. 1993. For purposes of summary judgment motion, fact is “material” when it is identified as such by controlling substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Mindler v. Clayton County, Ga.*, 831 F.Supp. 856.—Fed Civ Proc 2470.1.

N.D.Ga. 1993. Fact is “material,” for purposes of motion for summary judgment, when it is identified by controlling substantive law as essential element of nonmoving party’s case.—*Marion v. DeKalb County, Ga.*, 821 F.Supp. 685.—Fed Civ Proc 2470.1.

N.D.Ga. 1993. A fact is “material,” for purposes of summary judgment rule, when it is identified by controlling substantive law as essential element of nonmoving party’s case. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—*F.D.I.C. v. White*, 820 F.Supp. 1423.—Fed Civ Proc 2470.1.

N.D.Ga. 1993. On motion for summary judgment, fact is not “material” unless it is identified by controlling substantive law as essential element of nonmoving party’s case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Hartford Cas. Ins. Co. v. Banker’s Note, Inc.*, 817 F.Supp. 1567, affirmed 53 F.3d 1287.—Fed Civ Proc 2470.1.

N.D.Ga. 1992. Facts which in good faith are disputed, but which do not resolve or affect outcome of suit, will not preclude entry of summary judgment; such facts are not “material.” Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Merideth v. Grogan*, 812 F.Supp. 1223, affirmed 985 F.2d 579.—Fed Civ Proc 2470.1.

N.D.Ga. 1992. Issue is not “genuine” if it is unsupported by evidence or is created by evidence that is merely colorable or not significantly probative, and similarly, fact is not “material” unless it is identified by controlling substantive law as essential element of nonmoving party’s case; thus, to survive summary judgment motion, nonmoving party must come forward with specific evidence of every essential element to his or her case so as to create genuine issue for trial. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Carroll v. Primerica Financial Services Ins. Marketing*, 811 F.Supp. 1558.—Fed Civ Proc 2470.1.

N.D.Ga. 1992. For purposes of motion for summary judgment, fact is “material” when it is identified by controlling substantive law as essential element of nonmoving party’s case; issue is “genuine”

when evidence is such that reasonable jury could return verdict for nonmovant, and is not "genuine" if it is unsupported by evidence, or if it is created by evidence that is merely colorable or is not significantly probative. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Greene v. Georgia Pardons and Parole Bd.*, 807 F.Supp. 748.—Fed Civ Proc 2470.1.

N.D.Ga. 1992. For purposes of summary judgment, fact is "material" when it is identified by controlling substantive law as essential element of nonmoving party's case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Southern Business Communications, Inc. v. Matsushita Elec. Corp. of America*, 806 F.Supp. 950.—Fed Civ Proc 2470.1.

N.D.Ga. 1992. It is applicable substance of law which will identify what facts are material; facts which in good faith are disputed, but which do not resolve or affect the outcome of the suit, will not properly preclude summary judgment as those facts are not "material"; materiality of fact rests solely on governing substance of law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Ownbey Enterprises, Inc.*, 789 F.Supp. 1145.—Fed Civ Proc 2470.1.

N.D.Ga. 1992. Fact is "material," for purposes of motion for summary judgment, when it is identified by controlling substantive law as essential element of nonmoving party's case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Ochoa v. Principal Mut. Ins. Co.*, 144 F.R.D. 418.—Fed Civ Proc 2470.1.

N.D.Ga. 1991. Facts which in good faith are disputed, but which do not resolve or affect outcome of suit will not properly conclude the entry of summary judgment, as those facts are not "material."—*U.S. v. \$80,080.00 in U.S. Currency*, 779 F.Supp. 169.—Fed Civ Proc 2470.1.

N.D.Ga. 1980. Failure of defendants to fully and completely disclose defendants' prior involvements in various, successive unsuccessful commuter airline ventures spanning a ten-year period of time was "material" in connection with new issue of securities relating to defendants' start up of a new commuter airline venture. Securities Act of 1933, § 17(a) as amended 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Securities and Exchange Commission v. Carriba Air, Inc.*, 516 F.Supp. 120, affirmed S.E.C. v. Carriba Air, Inc., 681 F.2d 1318.—Sec Reg 60.28(13).

S.D.Ga. 2003. For purposes of antifraud provision of the Commodity Exchange Act (CEA), a misrepresentation or omission is "material" if a reasonable investor would consider it important in deciding whether to make an investment. Commodity Exchange Act, § 4o(1), as amended, 7 U.S.C.A. § 6o(1).—*Commodity Futures Trading Com'n v. Heffernan*, 245 F.Supp.2d 1276.—Com Fut 17.

D.Guam 1966. Government contractor's workmen's compensation insurance was neither "labor" nor "material" within Miller Act, and compensation insurer could not recover premium from contrac-

tor's payment surety. Miller Act, § 1 and (a) (2), 40 U.S.C.A. § 270a and (a) (2).—*U. S. for Use of Bordallo Consol., Inc. v. Markowitz Bros., Inc.*, 249 F.Supp. 610.—U S 67(7.1).

D.Hawai'i 1993. In criminal cases, discovery is limited to that required by due process clause which requires that government make available evidence that is material to guilt or punishment, and evidence is "material" only if its suppression might affect outcome of trial. U.S.C.A. Const.Amends. 5, 14.—*U.S. v. Yoshimura*, 831 F.Supp. 799.—Crim Law 627.5(1).

D.Hawai'i 1993. Under Hawaiian law, misrepresentations on insurance applications related to insurer's decision to insure risk, or if disclosure would have influenced rate of premiums, then they were "material." HRS § 431:10-209.—*Gasaway v. Northwestern Mut. Life Ins. Co.*, 820 F.Supp. 1241, affirmed and remanded 26 F.3d 957.—Insurance 3003(4).

D.Hawai'i 1992. Question of whether insured's misrepresentation of smoking history was "material" under Hawaii statute permitting material misrepresentations by insured to bar recovery on policy would be treated as one of law to be decided by court. HRS § 431:10-209.—*Genovia v. Jackson Nat. Life Ins. Co.*, 795 F.Supp. 1036.—Insurance 3026.

D.Idaho 1996. To preclude entry of summary judgment, issue must be both "material," that is it must affect outcome of litigation, and "genuine," that is it must be established by sufficient evidence supporting claimed factual dispute to require jury or judge to resolve parties' differing versions of truth at trial. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Farr v. U.S.*, 926 F.Supp. 147.—Fed Civ Proc 2470.1.

D.Idaho 1996. Issue is "material" for purposes of summary judgment if it affects outcome of litigation. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Andra*, 923 F.Supp. 157.—Fed Civ Proc 2470.1.

D.Idaho 1995. An issue is "material," for summary judgment purposes, if it affects outcome of litigation. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Podolan v. Aetna Life Ins. Co.*, 909 F.Supp. 1378, affirmed 107 F.3d 17.—Fed Civ Proc 2470.1.

D.Idaho 1995. Issue is "material," for summary judgment purposes, if it affects outcome of litigation. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Boyle v. Jerome Country Club*, 883 F.Supp. 1422.—Fed Civ Proc 2470.1.

D.Idaho 1995. For purposes of summary judgment motion, issue is "material" if it affects outcome of litigation and, before issue may be considered "genuine," it must be established by sufficient evidence supporting claimed factual dispute to require jury or judge to resolve parties' differing versions of truth at trial. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Pacific Rivers Council v. Thomas*, 873 F.Supp. 365.—Fed Civ Proc 2470.1.

D.Idaho 1994. Under summary judgment rule, it is clear that an issue, in order to preclude entry of summary judgment, must be both material and genuine; issue is "material" if it affects outcome of litigation, and is "genuine" when there is sufficient evidence supporting claimed factual dispute to require jury or judge to resolve parties' differing versions of truth at trial, or when evidence is such that reasonable jury could return verdict for non-moving party. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Nez Perce Tribe v. Idaho Power Co., 847 F.Supp. 791.—Fed Civ Proc 2470.1.

D.Idaho 1994. To preclude entry of summary judgment, issue must be both material and genuine; issue is "material" if it affects outcome of litigation and is "genuine" if it can be established by sufficient evidence supporting claimed factual dispute to require jury or judge to resolve parties' different versions of truth at trial. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Trinity Mountain Seed Co. v. MSD Agvet, a Div. of Merck & Co., Inc., 844 F.Supp. 597.—Fed Civ Proc 2470.1.

D.Idaho 1993. For purposes of summary judgment, issue is "material" if it affects outcome of litigation. Fed.Rules Civ.Proc.Rules 56, 56(c), 28 U.S.C.A.—Idaho Farm Bureau Federation v. Bab-bitt, 839 F.Supp. 739, vacated 58 F.3d 1392.—Fed Civ Proc 2470.1.

D.Idaho 1992. Issue is "material" for purposes of summary judgment if it affects outcome of litigation. Fed.Rules Civ.Proc.Rules 56, 56(e), 28 U.S.C.A.—U.S. v. First Interstate Bank of Idaho, N.A., 793 F.Supp. 934.—Fed Civ Proc 2470.1.

D.Idaho 1992. Issue is "material," as to preclude entry of summary judgment, if it affects outcome of litigation, and to be considered "genuine," issue must be established by sufficient evidence supporting claimed factual dispute to require jury or judge to resolve parties' differing versions of truth at trial. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Coeur D'Alene Lake v. Kiebert, 790 F.Supp. 998.—Fed Civ Proc 2470.1.

C.D.Ill. 2001. Misrepresentations must be material to constitute mail fraud, and a false statement is "material" if it has a natural tendency to influence the decision of the decision-making body to which it is addressed. 18 U.S.C.A. §§ 1341, 1343.—Corley v. Rosewood Care Center, Inc. of Peoria, 152 F.Supp.2d 1099.—Postal 35(11.1).

C.D.Ill. 1998. Compliance with public comment requirements of CERCLA national contingency plan (NCP) is "material," for purposes of recovering under CERCLA cost recovery or contribution sections. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 106, 107(a), 113(f), 42 U.S.C.A. §§ 9606, 9607(a), 9613(f); 40 C.F.R. § 300.700(c)(6).—Estes v. Scotsman Group, Inc., 16 F.Supp.2d 983.—Environ Law 446, 447.

C.D.Ill. 1994. Only disputes over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment; factual disputes that are irrelevant or unnecessary

will not be counted as "material." Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Murphy v. Keystone Steel & Wire Co., a Div. of Keystone Consol. Industries, Inc., 850 F.Supp. 1367, affirmed 61 F.3d 560.—Fed Civ Proc 2470.1.

C.D.Ill. 1994. Disputed facts are "material" for summary judgment purposes only if they might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Eason v. Nicholas, 847 F.Supp. 109.—Fed Civ Proc 2470.1.

C.D.Ill. 1992. Fact raised in summary judgment motion is "material" if it is outcome determinative under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Grossman v. Smart, 807 F.Supp. 1404.—Fed Civ Proc 2470.1.

N.D.Ill. 2002. Whether a statement is "material," for purposes of securities fraud claim, depends on how it affects an investor's perception of the security; if the court determines that there is a substantial likelihood that disclosure of the information would have been viewed by the reasonable investor to have significantly altered the total mix of information, the statement is material. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Grimes v. Navigant Consulting, Inc., 185 F.Supp.2d 906.—Sec Reg 60.28(11), 60.46.

N.D.Ill. 2001. Under Illinois law, when information that was included or withheld on application for insurance affects decision-making process of insurer, then information is "material" for purposes of rescission claim.—Green v. Massachusetts Cas. Ins. Co., 269 B.R. 782, affirmed In re Green, 42 Fed.Appx. 815.—Insurance 2958, 2964.

N.D.Ill. 2001. Under Illinois law, misrepresentation on application for insurance is considered "material," for purposes of rescission, when, after examination, the misrepresentation, would cause reasonably careful and intelligent persons to regard fact as stated to substantially increase the chances of event insured against, so as to cause a rejection of application by insurer.—Green v. Massachusetts Cas. Ins. Co., 269 B.R. 782, affirmed In re Green, 42 Fed.Appx. 815.—Insurance 2958.

N.D.Ill. 2000. To constitute retaliation under Title VII, adverse action taken by employer in response to complaints of employee must be "material," constituting more than mere inconvenience or alteration of job responsibilities. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—Collins v. Village of Woodridge, 96 F.Supp.2d 744.—Mast & S 30(6.10).

N.D.Ill. 1999. Evidence is "material" for purposes of establishing a *Brady* violation only if there exists a reasonable probability that its disclosure to the defense would have changed the result of the trial.—U.S. v. Willis, 43 F.Supp.2d 873, affirmed U.S. v. Martin, 248 F.3d 1161, corrected, certiorari denied *Epison v. U.S.*, 122 S.Ct. 198, 534 U.S. 887, 151 L.Ed.2d 140, certiorari denied 122 S.Ct. 276, 534 U.S. 922, 151 L.Ed.2d 202.—Crim Law 700(2.1).

N.D.Ill. 1999. For purposes of establishing a *Brady* violation, evidence that bears on a witness' credibility can be "material" when it has significant impeachment value.—U.S. v. Willis, 43 F.Supp.2d 873, affirmed U.S. v. Martin, 248 F.3d 1161, corrected, certiorari denied *Epison v. U.S.*, 122 S.Ct. 198, 534 U.S. 887, 151 L.Ed.2d 140, certiorari denied 122 S.Ct. 276, 534 U.S. 922, 151 L.Ed.2d 202.—Crim Law 700(4).

N.D.Ill. 1999. In order for evidence to be deemed "material" under *Brady*, such evidence must be admissible.—U.S. v. Willis, 43 F.Supp.2d 873, affirmed U.S. v. Martin, 248 F.3d 1161, corrected, certiorari denied *Epison v. U.S.*, 122 S.Ct. 198, 534 U.S. 887, 151 L.Ed.2d 140, certiorari denied 122 S.Ct. 276, 534 U.S. 922, 151 L.Ed.2d 202.—Crim Law 700(2.1).

N.D.Ill. 1999. Evidence that is subject of *Brady* claim is "material" only if there is reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—U.S. ex rel. Chambers v. Page, 39 F.Supp.2d 1091.—Crim Law 700(2.1).

N.D.Ill. 1999. A fact is "material," for purposes of antifraud provisions of federal securities laws, if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision and would view it as having significantly altered the total mix of information. Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—S.E.C. v. Randy, 38 F.Supp.2d 657.—Sec Reg 27.42, 60.28(11), 60.46.

N.D.Ill. 1999. Broker's misrepresentations about certificates of deposit (CDs) were "material," as required to find violation of antifraud provisions of federal securities laws, where broker falsely represented the CDs as a safe investment guaranteed to pay 14% annual interest and distributed literature to potential investors that falsely represented the status and location of issuing bank. Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—S.E.C. v. Randy, 38 F.Supp.2d 657.—Sec Reg 27.42, 60.46.

N.D.Ill. 1998. A misrepresentation is "material," and consequently deceptive under Federal Trade Commission Act prohibition of unfair and deceptive acts and practices in or affecting commerce, if it contains information that is important to consumers and is likely to affect their decision about whether to purchase a product. Federal Trade Commission Act, § 5(a), 15 U.S.C.A. § 45(a).—F.T.C. v. Sabal, 32 F.Supp.2d 1004.—Trade Reg 763.1.

N.D.Ill. 1998. For a misrepresentation to be "material," for purposes of 10b-5 claim, there must be a substantial likelihood that the information would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—

Harding University v. Consulting Services Group, L.P., 22 F.Supp.2d 824.—Sec Reg 60.46.

N.D.Ill. 1997. Under Illinois law, misrepresentation is "material" for purposes of fraud claim if it relates to matter upon which plaintiff could be expected to rely in determining whether to engage in conduct in question.—Real Estate Value Co. v. USAir, Inc., 979 F.Supp. 731.—Fraud 18.

N.D.Ill. 1996. Substantive law will identify which facts are material on motion for summary judgment, and only disputes over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment; factual disputes that are irrelevant or unnecessary are not "material." Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Iovin v. Northwestern Memorial Hosp., 916 F.Supp. 1395.—Fed Civ Proc 2470.1.

N.D.Ill. 1996. For purposes of securities fraud, statement is "material" only if it so alters total mix of information available to investor that it has potential to affect investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—S.E.C. v. Jakubowski, 912 F.Supp. 1073.—Sec Reg 60.46.

N.D.Ill. 1996. Term "investment" as used in definition of stock fraud "material" misrepresentation or omission to include those that affect total mix of information available to investor having potential to effect "investment decision", necessarily encompasses decisions to sell as well decisions to purchase securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—S.E.C. v. Jakubowski, 912 F.Supp. 1073.—Sec Reg 60.46.

N.D.Ill. 1996. Information is "material" and must be disclosed to Patent and Trademark Office (PTO) in prosecution of patent application when there is a substantial likelihood that a reasonable examiner would have considered information important in deciding whether to allow application to issue as a patent.—Monon Corp. v. Stoughton Trailers, Inc., 169 F.R.D. 99.—Pat 97.

N.D.Ill. 1996. Patent that disclosed trailer with contiguously abutting side panels was "material" prior art that had to be disclosed to Patent and Trademark Office (PTO) in application for patent for trailer body comprising pair of sidewalls consisting of side panels in contiguous abutting relation.—Monon Corp. v. Stoughton Trailers, Inc., 169 F.R.D. 99.—Pat 97.

N.D.Ill. 1995. For misrepresentation to be deemed "material" for purposes of claim under Rule 10b-5, there must be substantial likelihood that it would have been viewed by reasonable investor as having significantly altered total mix of information made available to investor. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Kleban v. S.Y.S. Restaurant Management, Inc., 912 F.Supp. 361.—Sec Reg 60.46.

N.D.Ill. 1995. Fact is "material" for purposes of Illinois Consumer Fraud Act (ICFA) if other party would have acted differently had she been aware of

it. S.H.A. 815 ILCS 505/2.—*Roberts v. Robert V. Rohrman, Inc.*, 909 F.Supp. 545.—Cons Prot 4.

N.D.III. 1995. Substantive law will identify which facts are “material” for purpose of summary judgment motion; only disputes over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment and factual disputes that are irrelevant or unnecessary are not “material.” Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Pyka v. Village of Orland Park*, 906 F.Supp. 1196.—Fed Civ Proc 2470.1.

N.D.III. 1995. New evidence is “material” for purposes of properly being considered by appeals council in social security disability case if there is reasonable possibility that it would change the outcome. Social Security Administration Regulations, § 404.970(b), 42 U.S.C.A.App.—*Yousif v. Chater*, 901 F.Supp. 1377.—Social S 142.5.

N.D.III. 1995. An omission is “material” for purposes of securities fraud action under § 10(b) of the Securities Exchange Act and Rule 10b-5, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered “total mix” of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Kriendler v. Chemical Waste Management, Inc.*, 877 F.Supp. 1140.—Sec Reg 60.28(11).

N.D.III. 1995. To support finding of fraud under federal securities laws, putative plaintiff must point to misrepresentations or omissions that were “material”; any statement or omission is “material” if there is substantial likelihood that disclosure of misrepresentation or omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77i(2); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Whirlpool Financial Corp. v. GN Holdings, Inc.*, 873 F.Supp. 111, affirmed 67 F.3d 605, rehearing and suggestion for rehearing denied.—Sec Reg 25.62(4).

N.D.III. 1994. To be “material,” for purposes of motion for summary judgment, disputed facts must be those that might affect outcome of the suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Sledd v. Lindsay*, 864 F.Supp. 819, reversed 102 F.3d 282.—Fed Civ Proc 2470.1.

N.D.III. 1994. On motion for summary judgment, “genuine” issue does not exist unless record evidence would permit reasonable fact finder to adopt nonmovants’ view, while only facts that would prove outcome-determinative under substantive law are “material.” Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Yeatman v. Inland Property Management, Inc.*, 845 F.Supp. 625.—Fed Civ Proc 2470.1.

N.D.III. 1993. Misrepresentation in application for insurance is “material,” such that insurer may later deny benefits, when applicant made representation with intent to defraud insurance company or when representation would have affected insurance company’s decision to accept applicant for cover-

age. S.H.A. 215 ILCS 5/154.—*Negoski v. Country Life Ins. Co.*, 843 F.Supp. 372.—Insurance 2959, 2960.

N.D.III. 1993. Only facts that would prove outcome-determinative under substantive law are “material” for summary judgment purposes. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Donato v. Metropolitan Life Ins. Co.*, 822 F.Supp. 535, affirmed 19 F.3d 375.—Fed Civ Proc 2470.1.

N.D.III. 1993. For summary judgment purposes, only facts that would prove outcome-determinative under the substantive law are “material.” Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Alber v. Illinois Dept. of Mental Health and Developmental Disabilities*, 816 F.Supp. 1298.—Fed Civ Proc 2470.1.

N.D.III. 1993. Disputed fact is “material,” and thus would preclude summary judgment, only if it might affect outcome of suit. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Diamond v. Chulay*, 811 F.Supp. 1321.—Fed Civ Proc 2470.1.

N.D.III. 1992. Disputed facts are “material” and preclude summary judgment if facts might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Hernandez v. Childers*, 806 F.Supp. 1368.—Fed Civ Proc 2470.1.

N.D.III. 1992. For purposes of summary judgment, “genuine” issue exists when record contains evidence sufficient to persuade reasonable fact finder to adopt view of either party, while “material” fact is one that would prove outcome-determinative under substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Licciardi v. Kropp Forge Div. Employees’ Retirement Plan*, 797 F.Supp. 1375, affirmed 990 F.2d 979, rehearing denied.—Fed Civ Proc 2470.1.

N.D.III. 1992. District court’s review of decision of appeals council as to whether additional evidence in social security disability case is “new and material” applies the same standard as used in determining materiality under statute which empowers court to remand to Secretary to consider new evidence that is material, and under that standard, new evidence is “material” if there is reasonable possibility that it would change the outcome. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—*Maxwell v. Sullivan*, 792 F.Supp. 582.—Social S 147.

N.D.III. 1992. To demonstrate that an issue is “material,” for summary judgment purposes, moving party must show that issue was outcome-determinative under applicable substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Childress v. Arcata Graphics Co.*, 782 F.Supp. 397.—Fed Civ Proc 2470.1.

N.D.III. 1992. To demonstrate that issue is “material” for summary judgment purposes, moving party must show that issue is outcome-determinative under applicable substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Respect Inc. v. Committee on Status of Women*, 781 F.Supp. 1358.—Fed Civ Proc 2470.1.

N.D.Ill. 1991. Evidence is "material" and must be disclosed to defendant by Government if there is reasonable probability that its disclosure would change outcome of trial.—U.S. v. Quintanilla, 760 F.Supp. 687, affirmed 2 F.3d 1469.—Crim Law 700(2.1).

N.D.Ill. 1987. Treating physician's letter, which gave opinion that claimant's prior condition was related to present condition, was not "material" and was not "new evidence" within meaning of statute, which permits court to order Secretary to take additional evidence, if there is showing of new and material evidence, where administrative law judge previously considered most of letter and determined that claimant was not presently disabled. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—Smith v. Bowen, 664 F.Supp. 1165.—Admin Law 819; Social S 149.

N.D.Ill. 1983. Fact is "material" and therefore required to be disclosed to Patent Office examiner, when there is substantial likelihood that reasonable examiner would consider it important in deciding whether to allow application to issue as patent. Patent and Trademark Office Practice Rule 1.56(a), 35 U.S.C.A.App.—Kimberly-Clark Corp. v. Johnson & Johnson, 573 F.Supp. 1179, reversed in part, vacated in part 745 F.2d 1437.—Pat 97.

N.D.Ill. 1982. Where it was beyond dispute that had former shareholder been fully informed of information regarding company's financial successes over three years preceding and including fiscal year of sale of his stock and of plans to sell company, such knowledge would have been substantial factor in negotiating sale price of stock, information was "material" within meaning of Rule 10b-5 and should have been disclosed. Securities Exchange Act of 1934, §§ 10, 10(b), 15 U.S.C.A. §§ 78j, 78j(b).—Dungan v. Colt Industries, Inc., 532 F.Supp. 832.—Sec Reg 60.28(13).

N.D.Ill. 1968. A fact which is not disclosed is "material", within rule providing that no solicitation shall be made by means of proxy statement containing statement which is false or misleading with respect to any material fact, if it would influence reasonable investor's conduct on matter in issue and the concept of materiality applies equally to decision to deal in a security or to vote on corporate acquisition. Securities Exchange Act of 1934, §§ 12(g), 14(a) as amended 15 U.S.C.A. §§ 78l (g), 78m(a).—Berman v. Thomson, 45 F.R.D. 342, vacated 312 F.Supp. 1031.—Corp 198(3); Sec Reg 49.22(2).

N.D.Ill. 1934. "Affect" means to be acted upon, influenced, concerned. "Material" means in respect to the matter, as distinguished from the form; in respect to the material cause. "Adverse" means having opposing interests; having interests for the preservation of which opposition is essential.—In re National Lock Co., 9 F.Supp. 432.

S.D.Ill. 1994. On motion for summary judgment, nonmoving party must show that disputed fact is "material," that is, that it is outcome-determinative under applicable law. Fed.Rules Civ.

Proc.Rule 56(e), 28 U.S.C.A.—Kaufman v. Cserny, 856 F.Supp. 1307.—Fed Civ Proc 2470.1, 2544.

S.D.Ill. 1993. Party not moving for summary judgment must show that the disputed fact is "material"; that is, it must be outcome-determinative under the applicable law. Fed.Rules Civ.Proc.Rule 56(e), 28 U.S.C.A.—G.J. Leasing Co., Inc. v. Union Elec. Co., 825 F.Supp. 1363, order vacated in part and modified on reconsideration 839 F.Supp. 21.—Fed Civ Proc 2470.1.

N.D.Ind. 2003. New evidence showing that claimant was enrolled in special education classes in school and was considered to be mildly mentally handicapped was "material," supporting remand for new determination of whether claimant was entitled to disability insurance benefits (DIB) and supplemental security income (SSI) benefits, inasmuch as administrative law judge (ALJ) afforded considerable weight to absence of any evidence indicating that claimant was enrolled in special education classes in school and discussed fact in detail when considering claimant's intellectual functioning and credibility, and new evidence revealed that claimant was considered mildly mentally handicapped, and possibly mentally retarded, before age 22 and supported his credibility at least in part. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g); 20 C.F.R. Part 404, Subpart P, App. 1, § 12.05.—Felix v. Barnhart, 243 F.Supp.2d 895.—Social S 147.5, 149.

N.D.Ind. 1997. "Material" misrepresentation for purpose of gaining admission into United States, such as would bar person from immigration under Displaced Persons Act (DPA), is concealment or misrepresentation which would have natural tendency to influence relevant decisions at issue. Displaced Persons Act of 1948, § 10, 62 Stat. 1013.—U.S. v. Ciurinskas, 976 F.Supp. 1167, affirmed 148 F.3d 729.—Aliens 71(7).

N.D.Ind. 1997. Defendant's willful misrepresentation and concealment, when seeking "displaced person" status, of his service during World War II in Lithuanian army unit which aided German Military in execution of suspected Jews and Communists, were "material" under Displaced Persons Act (DPA) and made him ineligible for immigration visa, and therefore, his entry to United States was unlawful and his procurement of naturalization as United States citizen was illegal. Immigration and Nationality Act, § 316, as amended, 8 U.S.C.A. § 1427; Displaced Persons Act of 1948, § 10, 62 Stat. 1013.—U.S. v. Ciurinskas, 976 F.Supp. 1167, affirmed 148 F.3d 729.—Aliens 71(7).

N.D.Ind. 1997. "Material" misrepresentation or concealment in naturalization process, such as would support revocation or cancellation of naturalization, is one that would have natural tendency to influence decision maker. Immigration and Nationality Act, § 340(a), as amended, 8 U.S.C.A. § 1451(a).—U.S. v. Ciurinskas, 976 F.Supp. 1167, affirmed 148 F.3d 729.—Aliens 71(7).

N.D.Ind. 1997. Defendant's misrepresentations during his application for naturalization, that he had belonged to no organizations prior to 1944, and

that he had never given false testimony in order to gain benefits under immigration and naturalization laws were “material,” and naturalization procured by such misrepresentations could be revoked. Immigration and Nationality Act, § 340(a), as amended, 8 U.S.C.A. § 1451(a).—U.S. v. Ciurinskas, 976 F.Supp. 1167, affirmed 148 F.3d 729.—Aliens 71(7).

N.D.Ind. 1996. On motion for summary judgment, substantive law determines which facts are “material”; that is, which facts might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—United Capitol Ins. Co. v. Special Trucks, Inc., 918 F.Supp. 1250.—Fed Civ Proc 2470.1.

N.D.Ind. 1995. Question of fact is “material,” for summary judgment purposes, if it will be outcome determinative of issue in case. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—Stone-Bey v. Swihart, 898 F.Supp. 1287.—Fed Civ Proc 2470.1.

N.D.Ind. 1995. For purpose of summary judgment motion, substantive law determines which facts are “material,” that is, which facts might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Herriman v. Conrail, Inc., 887 F.Supp. 1148.—Fed Civ Proc 2470.1.

N.D.Ind. 1994. Substantive law determines which facts are “material,” or might affect outcome of suit under governing law, so that issues as to those facts will preclude entry of summary judgment. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Thiele v. Norfolk and Western Ry. Co., 873 F.Supp. 1240, as amended, affirmed 68 F.3d 179.—Fed Civ Proc 2470.1.

N.D.Ind. 1994. For summary judgment purposes, fact is “material” if it is outcome determinative under applicable law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Salima v. Scherwood South, Inc., 866 F.Supp. 1125, affirmed 38 F.3d 929.—Fed Civ Proc 2470.1.

N.D.Ind. 1994. For purposes of motion for summary judgment, substantive law determines which facts are “material,” i.e., which facts might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Hartford Fire Ins. Co. v. Pure Air on the Lake Ltd. Partnership, 859 F.Supp. 1189.—Fed Civ Proc 2470.1.

N.D.Ind. 1994. In determining whether material facts exist, precluding summary judgment, substantive law determines which facts are “material,” i.e., which facts might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Liberty Mut. Ins. Co. v. Connecticut Indem. Co., 857 F.Supp. 1300, affirmed 55 F.3d 1333.—Fed Civ Proc 2470.1.

N.D.Ind. 1994. On motion for summary judgment, substantive law determines which facts are “material,” that is, which facts might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Complete Auto Transit, Inc. v. Chauffeurs, Teamsters and Helpers Local Union No. 414, Intern. Broth. of Teamsters, 848 F.Supp. 836.—Fed Civ Proc 2470.1.

N.D.Ind. 1993. In context of motion for summary judgment, “material” question of fact is question which will be outcome determinative of issue in case. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—Rubeck v. Sheriff of Wabash County, 824 F.Supp. 1291.—Fed Civ Proc 2470.1.

N.D.Ind. 1992. Information is “material,” for purposes of serving as basis for charge of inequitable conduct before Patent and Trademark Office, when there is substantial likelihood that reasonable examiner would consider it important in deciding whether to allow application to issue as patent.—Golden Valley Microwave Foods, Inc. v. Weaver Popcorn Co., Inc., 837 F.Supp. 1444, affirmed 11 F.3d 1072, rehearing denied, in banc suggestion declined, certiorari denied 114 S.Ct. 2136, 511 U.S. 1128, 128 L.Ed.2d 865.—Pat 97.

N.D.Ind. 1992. For summary judgment purposes, substantive law determines which facts are “material”; that is, which facts might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Koppie v. Busey, 832 F.Supp. 1245, affirmed 1 F.3d 651.—Fed Civ Proc 2470.1.

N.D.Ind. 1992. Party opposing summary judgment must show that disputed fact is “material,” that is, outcome-determinative under applicable law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Conery v. Bath Associates, 803 F.Supp. 1388.—Fed Civ Proc 2470.1.

N.D.Ind. 1992. Evidence is “material” for purposes of determining whether Secretary of Health and Human Services should be ordered to take new evidence with respect to application for social security disability insurance benefits if it reveals further information about applicant’s condition at time of Secretary’s decision and there is reasonable possibility that it would have changed outcome of Secretary’s determination. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—Gonzalez v. Sullivan, 799 F.Supp. 940.—Social S 149.

N.D.Ind. 1992. New evidence in social security disability case is “material” and justifies remand of case if there is reasonable possibility that, determination by Secretary of Health and Human Services would have changed based on combination of previously considered evidence and new evidence.—Creighton v. Sullivan, 798 F.Supp. 1359.—Social S 149.

S.D.Ind. 2000. Evidence is “material” for *Brady* purposes if there is a reasonable probability that its disclosure would affect the trial’s outcome.—U.S. v. Strickland, 113 F.Supp.2d 1272.—Crim Law 700(2.1).

S.D.Ind. 1995. Under Indiana law, insured’s misrepresentation in its application for umbrella liability policy regarding whether it owned an airplane was not “material,” notwithstanding underwriter’s testimony that policy would have been issued with airplane exclusion had true facts been known, and that that exclusion would have precluded coverage for crash of different airplane that insured purchased during policy period, where in-

suror did nothing to alter policy when it was told that insured had purchased the airplane that crashed; in essence, insurer gambled on its belief that policy already excluded aircraft liability, and it lost.—*American Nat. Fire Ins. Co. v. Rose Acre Farms Inc.*, 911 F.Supp. 366, affirmed 107 F.3d 451.—Insurance 3017.

S.D.Ind. 1995. Under Indiana law, representation in insurance application is “material” if fact or facts represented reasonably enter into and influence insurer’s decision whether to issue policy or to charge higher premium.—*American Nat. Fire Ins. Co. v. Rose Acre Farms Inc.*, 911 F.Supp. 366, affirmed 107 F.3d 451.—Insurance 2958.

S.D.Ind. 1994. Material misrepresentations and omissions made in connection with sale of security are prohibited practices under Indiana statute; statement or omission is considered “material” where reasonable investor would have considered it important in making his investment decision. *West’s A.I.C. 23–2–1–12*.—*Pippenger v. McQuik’s Oilube, Inc.*, 854 F.Supp. 1411.—Sec Reg 278.

S.D.Ind. 1977. Test for whether information is “material,” for purposes of the antifraud provision of the Williams Act amendments to the Securities Exchange Act, is whether a reasonable investor might have considered the information important in making his investment decision whether to tender or hold his securities. Securities Exchange Act of 1934, § 14(e) as amended 15 U.S.C.A. § 78n(e).—*Indiana Nat. Bank v. Mobil Oil Corp.*, 457 F.Supp. 1028.—Sec Reg 52.39(3).

N.D.Iowa 1995. Under Iowa law, fact is “material” for purposes of materiality element of fraudulent misrepresentation for rescission of insurance policy, if it substantially affects interest of party alleged to have been defrauded.—*Utica Mut. Ins. Co. v. Stockdale Agency*, 892 F.Supp. 1179.—Insurance 2958.

N.D.Iowa 1960. The word “material” as used in section of Social Security Act, providing that income derived by a farm landlord may be included in net earnings from self-employment if there shall be material participation by the owner in the production connotes something substantial and beyond the normal participation of a farm landlord in production activities on the farm. Social Security Act, § 211(a)(1)(A) as amended 42 U.S.C.A. § 411(a)(1)(A).—*Foster v. Flemming*, 190 F.Supp. 908, reversed 313 F.2d 604.—Social S 134.

S.D.Iowa 1993. For purposes of summary judgment, issue of material fact is “genuine issue of material fact” if it has real basis in record, and genuine issue of fact is “material” if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Rawlings v. Iowa Dept. of Human Services*, 820 F.Supp. 423, on subsequent appeal 16 F.3d 1228.—Fed Civ Proc 2470.1.

S.D.Iowa 1992. Issue of material fact is “genuine,” as to preclude summary judgment, if it has real basis in record; genuine issue of fact is “material” if it might affect outcome of suit under gov-

erning law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Nagle v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 790 F.Supp. 203.—Fed Civ Proc 2470.1.

D.Kan. 2002. Statement or omission is only “material,” under § 10(b) or Rule 10b–5, if reasonable investor would consider it important in determining whether to buy or sell stock. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—*In re Sprint Corp. Securities Litigation*, 232 F.Supp.2d 1193.—Sec Reg 60.28(11), 60.46.

D.Kan. 2002. For the purpose of a summary judgment motion, an issue is “genuine” if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way and an issue of fact is “material” if under the substantive law it is essential to the proper disposition of the claim; the mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Hammad v. Bombardier Learjet, Inc.*, 192 F.Supp.2d 1222.—Fed Civ Proc 2470.1.

D.Kan. 2001. Statement is “material,” for purposes of securities fraud claim, only if a reasonable investor would consider it important in determining whether to buy or sell stock.—*Gower v. IKON Office Solutions, Inc.*, 177 F.Supp.2d 1224.—Sec Reg 278.

D.Kan. 2001. Whether information is “material,” for purposes of securities fraud claim, depends on other information already available in market; unless statement significantly altered total mix of information available, it will not be considered material.—*Gower v. IKON Office Solutions, Inc.*, 177 F.Supp.2d 1224.—Sec Reg 278.

D.Kan. 2001. A fact is “material” for purposes of precluding summary judgment if, under the applicable substantive law, it is essential to the proper disposition of the claim, and an issue of fact is “genuine” if there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*PAS Communications, Inc. v. Sprint Corp.*, 139 F.Supp.2d 1149.—Fed Civ Proc 2470.1.

D.Kan. 2000. Evidence is “material,” for purposes of establishing *Brady* violation, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome.—*Gettings v. McKune*, 88 F.Supp.2d 1205.—Crim Law 700(2.1).

D.Kan. 2000. Under *Brady*’s materiality standard, evidence is “material” only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different; a “reasonable probability” is a probability sufficient to undermine the confidence in the outcome.—*U.S. v. Daniels*, 195 F.R.D. 681.—Crim Law 700(2.1).

D.Kan. 1999. Factual dispute is "material," thereby precluding summary judgment, only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Ramada Franchise Systems, Inc. v. Tresprop, Ltd., 75 F.Supp.2d 1205, opinion supplemented 1999 WL 1063048.—Fed Civ Proc 2470.1.

D.Kan. 1998. Evidence is "material" for purpose of determining if it is *Brady* material only if there is reasonable probability that, were the evidence to be disclosed to defense, result of proceeding would be different; reasonable probability is probability sufficient to undermine confidence in outcome.—U.S. v. Anderson, 31 F.Supp.2d 933, reconsideration granted in part 36 F.Supp.2d 1264.—Crim Law 700(2.1).

D.Kan. 1998. To maintain a claim for fraudulent or negligent misrepresentation, under Missouri law, plaintiff must allege that the alleged misrepresentation is material, and to be "material," a representation must be a statement of fact, not opinion.—VNA Plus, Inc. v. Apria Healthcare Group, Inc., 29 F.Supp.2d 1253.—Fraud 11(1), 18.

D.Kan. 1998. To be "material" and thus actionable under Title VII, adverse change in terms and conditions of employment must be more disruptive than mere inconvenience or alteration of job responsibilities; materially adverse change might be indicated by termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.—Haug v. City of Topeka, Equipment Management Div., 13 F.Supp.2d 1153.—Civil R 141.

D.Kan. 1998. While adverse job actions, for purposes of retaliation claim, cover more than measurable losses of salary or benefits, to be actionable, adverse employment action must be "material"; materially adverse change in terms and conditions of employment must be more disruptive than mere inconvenience or alteration of job responsibilities, and might be indicated by termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to particular situation.—White v. Midwest Office Technology, Inc., 5 F.Supp.2d 936.—Mast & S 30(6.10).

D.Kan. 1997. In securities fraud case, omitted fact is "material" if there is substantial likelihood that reasonable shareholder would consider it important in deciding whether to buy or sell a security; there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Koch v. Koch Industries, Inc., 969 F.Supp. 1460, affirmed in part, reversed in part 203 F.3d 1202, certiorari denied L.

B. Simmons Energy, Inc. v. Koch Industries, Inc., 121 S.Ct. 302, 531 U.S. 926, 148 L.Ed.2d 242, certiorari denied 121 S.Ct. 302, 531 U.S. 926, 148 L.Ed.2d 242.—Sec Reg 60.28(11).

D.Kan. 1996. Chapter 7 debtor's nondisclosure of assets on his bankruptcy schedules, including his failure to list his interest in partnership, qualified as "material" omissions of kind which might permit denial of debtor's discharge, even though some of the omitted assets, including debtor's interest in partnership, may not have had any value; nondisclosures were material to discovery of debtor's past assets and transactions. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Brown, 194 B.R. 514, affirmed in part, reversed in part 108 F.3d 1290, rehearing denied.—Bankr 3284.

D.Kan. 1996. For purposes of avoiding summary judgment "material" fact is one that might affect outcome of suit under governing law, and issue is "genuine" if evidence is such that reasonable jury could return verdict for summary judgment opponent. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Bauswell By and Through Bauswell v. Mauzey, 936 F.Supp. 787.—Fed Civ Proc 2470.1.

D.Kan. 1996. When guarantor does not consent to change in guaranty agreement, if change enlarges or lessens liability, it is "material" and vitiates contract.—Peoples Nat. Bank, Clay Center, Kansas v. Purina Mills, Inc., 931 F.Supp. 1525, clarification denied Peoples Nat. Bank, Clay Center, Kan. v. Purina Mills, Inc., 946 F.Supp. 889.—Guar 53(1).

D.Kan. 1996. To be "material" for purposes of rule pertaining to disclosure of governmental evidence, evidence must have more than abstract logical relationship to issue; there must be some indication that pretrial disclosure of disputed evidence would enable defendant significantly to alter quantum of proof in his favor. Fed.Rules, Cr.Proc.Rule 16(a)(1)(D).—U.S. v. King, 928 F.Supp. 1059.—Crim Law 627.5(1).

D.Kan. 1996. Materiality requirement, for purposes of rule pertaining to disclosure of governmental evidence, is not heavy burden; rather, evidence is "material" as long as there is strong indication that evidence will play important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal. Fed.Rules Cr.Proc.Rule 16(a)(1)(D).—U.S. v. King, 928 F.Supp. 1059.—Crim Law 627.5(1).

D.Kan. 1996. Evidence is "material" under *Brady* only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. King, 928 F.Supp. 1059.—Crim Law 700(2.1).

D.Kan. 1996. Impeachment evidence is "material" under *Brady* if it tends to undermine credibility of important government witness.—U.S. v. King, 928 F.Supp. 1059.—Crim Law 700(4).

D.Kan. 1996. A factual dispute is "material," for summary judgment purposes, only if it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Mart v.

Dr Pepper Co., 923 F.Supp. 1380.—Fed Civ Proc 2470.1.

D.Kan. 1996. In order for documents and tangible objects in possession of government to be “material,” and subject to discovery, requested information must have more than abstract logical relationship to issues, and there must be some indication that pretrial disclosure of disputed evidence would have enabled defendant significantly to alter quantum of proof in his favor. Fed.Rules Cr.Proc. Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Wood, 915 F.Supp. 1126, reversed 106 F.3d 942.—Crim Law 627.6(2).

D.Kan. 1996. Materiality requirement which must be met for defendant to be entitled to discovery of documents and tangible objects in possession of government typically is not heavy burden, and information is “material” as long as there is strong indication that evidence will play important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal; stated simply, defendant must come forth with facts tending to show that government is in possession of information helpful to defense. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Wood, 915 F.Supp. 1126, reversed 106 F.3d 942.—Crim Law 627.6(2).

D.Kan. 1996. Defendant who was charged with drug offenses after police found narcotics with assistance of drug detection dog was entitled to discovery only of records of dog’s certification and recertifications and structured training over reasonable time period, and was not entitled to discovery of all training and testing documents for dog, all records of dog’s performance and all field reports, and all medical and veterinary records for dog; additional records sought by defendant were not “material,” as dog was at time of search in good health and no questions were raised about reliability of dog. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Wood, 915 F.Supp. 1126, reversed 106 F.3d 942.—Crim Law 627.6(6).

D.Kan. 1995. Factual dispute is “material” for summary judgment purposes only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Clay v. Board of Trustees of Neosho County Community College, 905 F.Supp. 1488.—Fed Civ Proc 2470.1.

D.Kan. 1995. Factual dispute is “material” for purpose of summary judgment motion only if it might affect outcome of suit under governing law, and “genuine” factual dispute requires more than mere scintilla of evidence. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—In re Aluminum Phosphide Antitrust Litigation, 905 F.Supp. 1457, on reconsideration.—Fed Civ Proc 2470.1.

D.Kan. 1995. For summary judgment purposes, “material” fact is one that might affect outcome of suit under governing law, and “genuine” issue is one for which the evidence is such that reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Singleton v. Board of Educ. USD 500, 894 F.Supp. 386.—Fed Civ Proc 2470.1.

D.Kan. 1995. For summary judgment purposes, “material” fact is one that might affect outcome of suit under the governing law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Witt v. Roadway Exp., 880 F.Supp. 1455, affirmed in part, reversed in part 136 F.3d 1424, certiorari denied 119 S.Ct. 188, 525 U.S. 881, 142 L.Ed.2d 154, on remand 164 F.Supp.2d 1232.—Fed Civ Proc 2470.1.

D.Kan. 1995. For purposes of summary judgment motion factual dispute is “material” only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Mettayer v. State of Kan., 874 F.Supp. 1198.—Fed Civ Proc 2470.1.

D.Kan. 1994. Fact is “material”, for purposes of triggering obligation to disclose breach of which would constitute fraud by silence under Kansas law, if reasonable person would attach importance to it in determining his or her choice of action in transaction in question.—Eckholt v. American Business Information, Inc., 873 F.Supp. 510.—Fraud 18.

D.Kan. 1994. A factual dispute is “material,” for summary judgment purposes only if it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Dorner v. Polsinelli, White, Vardeman & Shalton, P.C., 856 F.Supp. 1483.—Fed Civ Proc 2470.1.

D.Kan. 1993. Party seeking summary judgment has burden of showing genuine issue of “material” fact, which is fact that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Stillie v. AM Intern., Inc., 841 F.Supp. 370, on reconsideration 850 F.Supp. 960.—Fed Civ Proc 2470.1, 2544.

D.Kan. 1993. An issue of fact is “material,” for purposes of summary judgment, if proof of it might affect outcome of lawsuit. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Phelps v. Hamilton, 828 F.Supp. 831, reversed 59 F.3d 1058, on remand 934 F.Supp. 373, affirmed 113 F.3d 1246.—Fed Civ Proc 2470.1.

D.Kan. 1992. In order to be “material” under federal securities law, misrepresentation or omission in offer or sale of securities need not be outcome determinative in the sense that it actually would have caused reasonable investor to act differently; rather, plaintiff need only make showing of substantial likelihood that, under all circumstances, omitted fact would have assumed actual significance in deliberations of reasonable shareholder, or that reasonable investor would have viewed disclosure of information as having significantly altered total mix of information available. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l(2).—Comeau v. Rupp, 810 F.Supp. 1127, reconsideration denied 810 F.Supp. 1172.—Sec Reg 60.46.

D.Kan. 1992. An issue of fact is “material,” for summary judgment purposes, if proof thereof might affect outcome of lawsuit as assessed from controlling substantive law.—Money v. Great Bend Packing Co., Inc., 783 F.Supp. 563.—Fed Civ Proc 2470.1.

D.Kan. 1991. An issue of fact is “material,” for purposes of summary judgment, if proof of it might affect outcome of lawsuit. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*U.S. v. Goode*, 781 F.Supp. 704.—Fed Civ Proc 2470.1.

D.Kan. 1991. An issue of fact is “material” under summary judgment rule if proof thereof might affect outcome of lawsuit as assessed from controlling substantive law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Rosile v. Aetna Life Ins. Co.*, 777 F.Supp. 862, affirmed 972 F.2d 357.—Fed Civ Proc 2470.1.

D.Kan. 1991. Issue of fact is “material” for purposes of summary judgment rule if proof of it might affect outcome of lawsuit as assessed from controlling substantive law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Four Circle Co-op v. Kansas State Bank & Trust Co.*, 771 F.Supp. 1144, reconsideration denied 1992 WL 123682.—Fed Civ Proc 2470.1.

D.Kan. 1991. Issue is “material” for purposes of summary judgment if proof of issue might affect outcome of lawsuit as assessed from controlling substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Central States Const., Inc. v. Small Business Admin. of U.S.*, 770 F.Supp. 1447.—Fed Civ Proc 2470.1.

D.Kan. 1991. An issue of fact is “material,” for purposes of summary judgment motion, if proof of it might affect outcome of lawsuit.—*Waller v. Consolidated Freightways Corp. of Delaware*, 767 F.Supp. 1548.—Fed Civ Proc 2470.2.

D.Kan. 1991. For purposes of motion for summary judgment, issue of fact is “material” if proof of it might affect outcome of lawsuit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Adams v. Walker*, 767 F.Supp. 1099.—Fed Civ Proc 2470.1.

D.Kan. 1991. Issue of fact is “genuine” if the evidence is significantly probative or more than merely colorable so that a jury could reasonably return a verdict for the nonmoving party; issue of fact is “material” if proof of it might affect the outcome of the lawsuit.—*Wieberg v. Resthaven Gardens of Memory, Inc.*, 759 F.Supp. 687.—Fed Civ Proc 2470.1.

D.Kan. 1991. Issue of fact is “material,” for purposes of determining whether summary judgment may be granted, if proof of it might affect outcome of lawsuit as assessed from controlling substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Matthews v. U.S.*, 756 F.Supp. 511.—Fed Civ Proc 2470.1.

D.Kan. 1990. In context of motion for summary judgment, “issue of fact” is “genuine” if evidence is significantly probative or more than merely colorable such that jury could reasonably return verdict for nonmoving party; issue of fact is “material” if proof thereof might affect outcome of lawsuit as assessed from controlling substantive law. Fed. Rules Civ.Proc.Rule 56, 56(c), 28 U.S.C.A.—*Huseby v. Board of County Com’rs of Cowley County, Kan.*, 754 F.Supp. 844.—Fed Civ Proc 2470.1.

D.Kan. 1990. “Issue of fact” is “genuine” if the evidence is significantly probative or more than merely colorable, so that a jury could reasonably return a verdict for the nonmoving party; issue of fact is “material” if proof of it might affect the outcome of the lawsuit under the controlling substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Elam v. Williams*, 753 F.Supp. 1530, affirmed 953 F.2d 1391.—Fed Civ Proc 2470.1.

D.Kan. 1990. Issue is “material” within meaning of summary judgment rule if proof might affect outcome of lawsuit as assessed from controlling law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Agri-Stor Leasing v. Bertholf*, 753 F.Supp. 881.—Fed Civ Proc 2470.1.

D.Kan. 1990. Issue of fact is “material,” for summary judgment purposes, if proof thereof might affect the outcome of lawsuit as assessed from controlling substantive law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Nature’s Share, Inc. v. Kutter Products, Inc.*, 752 F.Supp. 371.—Fed Civ Proc 2470.1.

D.Kan. 1990. Issue of fact is “material,” as required to deny motion for summary judgment, if proof thereof might affect outcome of lawsuit as assessed from controlling substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*U.S. Fidelity & Guar. Co. v. Morrison Grain Co., Inc.*, 734 F.Supp. 437, affirmed 999 F.2d 489.—Fed Civ Proc 2470.1.

D.Kan. 1990. Issue of fact is “genuine” for purposes of precluding summary judgment if the evidence is significantly probative or more than merely colorable, such that jury could reasonably return a verdict for the nonmoving party, and issue of fact is “material” if proof thereof might affect the outcome of the lawsuit as assessed from the controlling substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Hermes v. Federal Crop Ins. Corp.*, 729 F.Supp. 1292, affirmed 986 F.2d 1427.—Fed Civ Proc 2470.1.

D.Kan. 1989. Issue of fact involves “material” facts, for summary judgment purposes, when proof thereof might affect outcome of lawsuit as determined by controlling substantive law.—*In re Cress*, 106 B.R. 246, amendment denied 1989 WL 159390, affirmed 930 F.2d 32, affirmed *Cress v. Agristor Leasing, Inc.*, 930 F.2d 32.—Fed Civ Proc 2470.1.

D.Kan. 1989. Judge whose testimony before Federal Power Commission was given more than four years before alleged price-fixing conspiracy, and whose testimony was useful, if at all, only to provide background information, was not “material” witness and did not have to disqualify himself from presiding over price-fixing action. 28 U.S.C.A. § 455(b)(5).—*In re Wyoming Tight Sands Antitrust Cases*, 726 F.Supp. 288.—Judges 47(1).

D.Kan. 1989. Issue of fact is “material” for purposes of summary judgment if proof thereof might affect the outcome of the lawsuit as assessed from the controlling substantive law.—*Hullman v. Board of Trustees of Pratt Community College*, 725 F.Supp. 1536, on reconsideration in part 732

F.Supp. 91, affirmed 950 F.2d 665, affirmed 950 F.2d 665.—Fed Civ Proc 2470.1.

D.Kan. 1988. Issue of fact is “material” only when the dispute is over facts that might affect the outcome of a suit under the governing laws. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Ferro v. Amigo, Inc., 703 F.Supp. 890.—Fed Civ Proc 2470.1.

D.Kan. 1988. Issue of fact is “material,” for summary judgment purposes, if it is one that might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(a), 28 U.S.C.A.—Leroy v. Hartford Steam Boiler Inspection and Ins. Co., 695 F.Supp. 1120.—Fed Civ Proc 2470.1.

W.D.Ky. 1998. New evidence is not “material” to a proceeding under the Social Security Act, as required before a court can remand the case to the agency to consider the new evidence, unless the proponent shows that there is a reasonable probability that the agency would have reached a different disposition if presented with the new evidence. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—Patel v. Shalala, 17 F.Supp.2d 662.—Social S 8.20.

W.D.Ky. 1941. An insurance premium is neither “labor,” “material,” nor “supplies” as such terms are used in Kentucky statute providing a lien in favor of persons who furnish labor, material or supplies for the construction of a public improvement. Ky.St. § 2492.—In re Zaepfel & Russell, 49 F.Supp. 709, affirmed Farmers State Bank v. Jones, 135 F.2d 215.—Mun Corp 373(2); Pub Contr 28.

E.D.La. 2000. Omitted fact is “material,” for purposes of securities fraud liability under Securities Act, if there is substantial likelihood that reasonable investor would consider it important in deciding how to act. Securities Act of 1933, §§ 11, 12(a)(2), 15 U.S.C.A. §§ 77k, 77l(a)(2).—Eizenga v. Stewart Enterprises, Inc., 124 F.Supp.2d 967.—Sec Reg 25.21(3), 25.62(4).

E.D.La. 1995. For purposes of summary judgment, “material” facts are those that will affect outcome of lawsuit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Abraham v. Exxon Corp., 892 F.Supp. 807, affirmed in part, vacated in part 85 F.3d 1126.—Fed Civ Proc 2470.1.

E.D.La. 1994. Subject matter of false oath is “material” and sufficient to bar debtor’s discharge if it bears relationship to debtor’s business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of his property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—Oldendorf v. Buckman, 173 B.R. 99.—Bankr 3283.

W.D.La. 1996. While factual dispute is “genuine” if evidence is such that reasonable jury could return verdict for nonmovant for summary judgment, such dispute is only “material” when the governing law indicates that it may affect outcome of the suit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Rapides Regional Medical Center v. American United Life Ins. Co., 938 F.Supp. 380.—Fed Civ Proc 2470.1.

W.D.La. 1996. For summary judgment purposes, fact is “material” if proof of its existence or nonexistence would affect outcome of lawsuit under law applicable to case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Sea Robin Pipeline Co. v. Red Sea Group, Ltd., 919 F.Supp. 991, 163 A.L.R. Fed. 647.—Fed Civ Proc 2470.1.

W.D.La. 1991. Misrepresentation is “material,” within meaning of Louisiana statute governing effect of misrepresentations by insured in written application for health insurance, if knowledge of fact would have influenced insurer in determining whether to assume risk and issue policy, or in fixing premium. LSA-R.S. 22:619.—Tingle v. Pacific Mut. Ins. Co., 837 F.Supp. 186, reversed 996 F.2d 105, on remand 837 F.Supp. 191.—Insurance 2958.

W.D.La. 1986. In proving materiality within statute imposing penalty for promoting abusive tax shelters, the Government need not demonstrate that purchasing taxpayer has relied on purported misrepresentations; rather, matter is considered “material” to arrangement if it would have substantial impact on the decision-making process of a reasonably prudent investor. 26 U.S.C.A. § 6700.—U.S. v. Smith, 657 F.Supp. 646, affirmed 814 F.2d 1086.—Int Rev 5219.50.

W.D.La. 1956. Where subcontract on federal project covered by Miller Act was terminated by mutual consent of subcontractor and general contractor, and after termination thereof general contractor detained subcontractor’s equipment on job and used same, fair rental value of such equipment was considered to be “material” for which surety on general contractor’s bond was liable. Miller Act, § 1 et seq., 40 U.S.C.A. § 270a et seq.—U.S. ex rel. Crowder v. Fidelity & Deposit Co. of Md., 144 F.Supp. 322.—U S 67(11).

D.Me. 2002. In the summary judgment context, “material” means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Carneal v. Leighton, 237 F.Supp.2d 104.—Fed Civ Proc 2470.1.

D.Me. 1996. For summary judgment purposes, “material” means that contested fact has potential to change outcome of suit under the governing law if dispute over it is resolved favorably to nonmovant. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Patterson v. Alltel Information Services, Inc., 919 F.Supp. 500.—Fed Civ Proc 2470.1.

D.Me. 1995. For summary judgment purposes, “material” fact is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Penobscot Indian Nation v. Key Bank of Maine, 906 F.Supp. 13, affirmed in part, vacated in part, reversed in part 112 F.3d 538, rehearing en banc denied, certiorari denied 118 S.Ct. 297, 522 U.S. 913, 139 L.Ed.2d 229.—Fed Civ Proc 2470.1.

D.Me. 1994. For summary judgment purposes, fact is “material” if it may affect outcome of case, and dispute is “genuine” only if trial is necessary to

resolve evidentiary disagreement. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Allen on Behalf of Bankruptcy Estate of TSC Exp. Co. v. G.H. Bass & Co., 176 B.R. 91.—Fed Civ Proc 2470.1.

D.Me. 1992. For purposes of determining whether plaintiff obtained relief on significant claim in litigation effecting “material” alteration in parties’ legal relationship and was therefore entitled to attorney fees under Individuals with Disabilities Education Act (IDEA), “material” means actual, as opposed to significant, alteration. Individuals with Disabilities Education Act, § 615(e), as amended, 20 U.S.C.A. § 1415(e).—Fenneman v. Town of Gorham, 802 F.Supp. 542.—Schools 155.5(5).

D.Me. 1991. A fact is “material,” for purposes of summary judgment rule, if it may affect outcome of case and the dispute is “genuine” only if trial is necessary to resolve evidentiary disagreement. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Walters v. Prince of Fundy Cruises, Ltd., 781 F.Supp. 811.—Fed Civ Proc 2470.1.

D.Md. 2002. An omission is deemed “material,” under Maryland’s Consumer Protection Act (CPA), if a significant number of unsophisticated consumers would attach importance to the information in determining a choice of action. West’s Ann.Md. Code, Commercial Law, §§ 13–301(3), 13–303.—Miller v. Pacific Shore Funding, 224 F.Supp.2d 977.—Cons Prot 4.

D.Md. 2002. A misrepresented or omitted fact is “material,” as would violate the Securities Act, if there is a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of a reasonable shareholder. Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.—In re USEC Securities Litigation, 190 F.Supp.2d 808.—Sec Reg 25.21(3), 25.62(4).

D.Md. 2001. Under Maryland law, for failure of performance by one party to suspend the duty of the other party to perform, the failure must be “material,” i.e., it must affect the purpose of the contract in an important or vital way. Restatement (Second) of Contracts, § 237.—Bollech v. Charles County, MD, 166 F.Supp.2d 443.—Contracts 318.

D.Md. 2001. Evidence is “material,” for *Brady* purposes, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a reasonable probability is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 14.—Booth-El v. Nuth, 140 F.Supp.2d 495.—Crim Law 700(2.1).

D.Md. 2000. Under Maryland rule that insured’s material misrepresentation on policy application invalidates policy, misrepresentation is “material” if insurer in good faith would either not have issued policy or would not have issued policy at same premium rate if true facts had been known.—Band v. Paul Revere Life Ins. Co., 114 F.Supp.2d 378, reversed and remanded 14 Fed.Appx. 210.—Insurance 2958.

D.Md. 2000. A statement or omitted fact is “material,” for purposes of fraud claim under Commodity Exchange Act, if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. Commodity Exchange Act, § 4b(a)(i–iii), as amended, 7 U.S.C.A. § 6b(a)(i–iii).—Commodity Futures Trading Com’n v. Noble Wealth Data Information Services, Inc., 90 F.Supp.2d 676, affirmed in part, vacated in part 278 F.3d 319, certiorari denied Baragosh v. Commodity Futures Trading Com’n, 123 S.Ct. 415, 154 L.Ed.2d 296.—Com Fut 17.

D.Md. 1997. For purpose of determining whether particular amendment to indictment requires resubmission of indictment to grand jury, “essential” or “material” elements of indictment are those which must be specified with precise accuracy in order to establish illegality of act.—U.S. v. Iodi, 982 F.Supp. 1046, appeal dismissed 139 F.3d 894.—Ind & Inf 159(1).

D.Md. 1996. The only facts that are properly considered “material,” for purposes of summary judgment motion, are those that might affect outcome of case under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Stricker v. Eastern Off Road Equipment, Inc., 935 F.Supp. 650.—Fed Civ Proc 2470.1.

D.Md. 1996. Fact is “material,” for purposes of summary judgment, if when applied to substantive law, it affects outcome of litigation. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Strauss v. Peninsula Regional Medical Center, 916 F.Supp. 528.—Fed Civ Proc 2470.1.

D.Md. 1994. Evidence is “material” for purposes of required disclosure by the prosecution under *Brady* only if there is reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—Thomas-Bey v. Smith, 869 F.Supp. 1214, affirmed 67 F.3d 296.—Crim Law 700(2.1).

D.Md. 1993. “Material” disputes defeating summary judgment are only those disputes over facts that might affect the outcome of the case under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Foxglenn Investors Ltd. Partnership v. Housing Authority for Prince George’s County, 844 F.Supp. 1078, affirmed 35 F.3d 947.—Fed Civ Proc 2470.1.

D.Md. 1993. Only disputes over those facts that might affect outcome of case under the governing law are considered to be “material” for summary judgment purposes. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Leakas v. Columbia Country Club, 831 F.Supp. 1231.—Fed Civ Proc 2470.1.

D.Md. 1993. Fact is “material” for purposes of summary judgment only if, when applied to substantive law, fact affects outcome of suit. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—HRW Systems, Inc. v. Washington Gas Light Co., 823 F.Supp. 318.—Fed Civ Proc 2470.1.

D.Md. 1993. Only facts which bear on outcome of suit under applicable law are “material,” for

purposes of summary judgment standard. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Moore v. Reese*, 817 F.Supp. 1290.—Fed Civ Proc 2470.1.

D.Md. 1993. For purposes of summary judgment motion, fact is “material” only if, when applied to substantive law, fact affects outcome of suit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Haavistola v. Community Fire Co. of Rising Sun, Inc.*, 812 F.Supp. 1379, reversed 6 F.3d 211, on remand 839 F.Supp. 372.—Fed Civ Proc 2470.1.

D.Md. 1992. Only disputes over those facts that might affect outcome of case are “material” for purposes of summary judgment.—*Marrs v. Marriott Corp.*, 830 F.Supp. 274.—Fed Civ Proc 2470.1.

D.Md. 1990. Facts are “material,” for summary judgment purposes, if they would affect outcome of case; mere scintilla of evidence in favor of nonmoving party is insufficient to defeat summary judgment motion.—*Featherson v. Montgomery County Public Schools*, 739 F.Supp. 1021.—Fed Civ Proc 2470.1.

D.Md. 1980. Under Maryland law, a misrepresentation in an application for insurance is “material” if reasonably careful and intelligent person would have regarded fact communicated at time of effecting insurance as substantially increasing chances of loss insured against.—*Federal Leasing, Inc. v. Underwriters at Lloyd’s*, 487 F.Supp. 1248, affirmed 650 F.2d 495.—Insurance 2958.

D.Md. 1967. A fact is “material” within meaning of rule of Securities and Exchange Commission providing that no proxy solicitation shall contain a statement which is false and misleading with respect to any material fact or which omits to state a material fact necessary in order to make statements therein not false or misleading, if its misstatement or its omission would influence a stockholder’s vote.—*Walpert v. Bart*, 280 F.Supp. 1006, affirmed 390 F.2d 877.—Corp 198(3); Sec Reg 49.22(2).

D.Md. 1965. Logs forming corduroy road and pipe used for drainage were “material” within statute prohibiting Miller Act suit more than one year after day on which material was supplied, though not physically incorporated in the final work, especially where subcontract provided for construction, maintenance, and removal of temporary haul roads. Miller Act, § 2, 40 U.S.C.A. § 270b.—*U.S. for Use and Benefit of Taykinswell, Inc. v. Bencon Const. Co.*, 248 F.Supp. 502, affirmed 369 F.2d 405.—U S 67(16.1).

D.Md. 1928. Hook ladders, used on government work and not returned, held not “material” for which subcontractor could recover under contractor’s bond. Materialmen’s Act, 40 U.S.C.A. § 270.—*U.S. for Use of Baltimore Cooperage Co. v. McCay*, 28 F.2d 777.—U S 67(7.1).

D.Mass. 2002. Evidence is “material” for purposes of *Brady* violation if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Owens v. U.S.*, 236 F.Supp.2d 122.—Crim Law 700(2.1).

D.Mass. 2002. For the purpose of a motion for summary judgment, issues of fact are in “genuine” dispute if they may reasonably be resolved in favor of either party, and facts are “material” if they possess the capacity to sway the outcome of the litigation under the applicable law. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—*Atlantic Research Marketing Systems, Inc. v. G.G. & G., L.L.C.*, 178 F.Supp.2d 40.—Fed Civ Proc 2470.1.

D.Mass. 2001. To be “material,” so as to support remand to Commissioner of Social Security Administration by court reviewing denial of application for supplemental security income (SSI) disability benefits, new evidence must be both relevant to claimant’s condition during the time period for which benefits were denied and probative; the concept of materiality requires a reasonable possibility that the new evidence would have influenced Commissioner to decide claimant’s application differently.—*Beliveau ex rel. Beliveau v. Apfel*, 154 F.Supp.2d 89.—Social S 149.

D.Mass. 1999. Evidence is “material,” for purposes of determining if government’s failure to preserve evidence violates due process, when it is apparently exculpatory before it is lost and is of such a nature that defendant would be unable to obtain comparable evidence by other reasonably available means. U.S.C.A. Const.Amend. 14.—*Huenefeld v. Maloney*, 62 F.Supp.2d 211, affirmed 2 Fed.Appx. 54.—Const Law 268(5).

D.Mass. 1999. For purposes of Bankruptcy Code provision authorizing the denial of discharge to a debtor who knowingly and fraudulently makes a false oath of a fact material to the bankruptcy case, fact is “material” if it is pertinent to the discovery of assets, including the history of a debtor’s financial transactions. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—*In re Sterman*, 244 B.R. 499.—Bankr 3282.1.

D.Mass. 1998. A misrepresentation or omission is “material” and thereby actionable, for purposes of securities fraud claim under Securities Exchange Act § 10(b) and Securities and Exchange Commission (SEC) Rule 10b-5, only if a reasonable investor would have viewed it as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*In re Boston Technology, Inc. Securities Litigation*, 8 F.Supp.2d 43.—Sec Reg 60.28(11), 60.46.

D.Mass. 1998. An omission is “material,” for purposes of securities fraud claim under Securities Exchange Act § 10(b) and Securities and Exchange Commission (SEC) Rule 10b-5, if a reasonable investor might have considered it important in the making of the investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*In re Boston Technology, Inc. Securities Litigation*, 8 F.Supp.2d 43.—Sec Reg 60.28(11).

D.Mass. 1998. Misrepresentations with regard to enhanced employee benefit plans become “material,” under federal or Massachusetts law, only when the plans are under “serious consider-

ation.”—*Rodowicz v. Massachusetts Mut. Life Ins. Co.*, 3 F.Supp.2d 1481, affirmed in part, reversed in part 192 F.3d 162, as amended, rehearing en banc denied 195 F.3d 65.—Pensions 47.

D.Mass. 1998. Misrepresentation is “material” within meaning of Massachusetts statute permitting avoidance of policy based on material oral or written misrepresentation or warranty, if it concerns fact, knowledge or ignorance of which would naturally influence judgment of underwriter in making contract at all, estimating degree and character of risk, or fixing rate of premium. M.G.L.A. c. 175, § 186.—*F.D.I.C. v. Underwriters of Lloyd’s of London Fidelity Bond Number 834/FB9010020*, 3 F.Supp.2d 120.—Insurance 2958.

D.Mass. 1998. Information is “material,” for purposes of determining whether nondisclosure by a patent applicant constitutes inequitable conduct invalidating the patent, when there is a substantial likelihood that a reasonable examiner would have considered the information important in deciding whether to allow an application to issue as a patent.—*Nova Biomedical Corp. v. Mallinckrodt Sensor Systems, Inc.*, 997 F.Supp. 187.—Pat 97.

D.Mass. 1997. Omission is “material,” under §10(b) and Rule 10b-5, if a reasonable juror could find that a reasonable investor would view information allegedly withheld by defendants as significantly altering the total mix of available information to investors. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*In re Biogen Securities Litigation*, 179 F.R.D. 25.—Sec Reg 60.28(11).

D.Mass. 1996. Omission from arrest warrant affidavit is not “material” if, even had omitted statement been included, there would still have been probable cause to issue warrant. U.S.C.A. Const. Amend. 4.—*Duca v. Martins*, 941 F.Supp. 1281.—Crim Law 213.

D.Mass. 1996. Fact is “material,” for summary judgment purposes, if it might affect outcome of the suit under the governing substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Stephenson v. State Street Bank & Trust Co.*, 924 F.Supp. 1258.—Fed Civ Proc 2470.1.

D.Mass. 1995. “Genuine” issue for summary judgment is one that only finder of fact can properly resolve because it may reasonably be resolved in favor of either party and “material” issue is one that affects outcome of suit. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Cullen v. E.H. Friedrich Co., Inc.*, 910 F.Supp. 815.—Fed Civ Proc 2470.1.

D.Mass. 1995. A genuine fact is considered “material,” for summary judgment purposes, only when it has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*McMillan v. Massachusetts Soc. for Prevention of Cruelty to Animals*, 880 F.Supp. 900, on reconsideration in part 168 F.R.D. 94.—Fed Civ Proc 2470.1.

D.Mass. 1994. In determining whether particular information is “material,” for purpose of patent applicant’s disclosure to Patent and Trademark Of-

fice, test is whether there is substantial likelihood that reasonable patent examiner would consider omitted reference important in deciding whether to allow application and issue patent.—*Avco Corp. v. PPG Industries, Inc.*, 867 F.Supp. 84.—Pat 97.

D.Mass. 1994. Alleged oral representations made by creditor who financed inventory of guarantor’s corporations that it would not enforce guaranty without first attempting to collect from corporations and then proceeding against collateral were not “material” to guarantor’s decision to execute guaranty, and thus, oral representations did not bar enforcement of guaranty, where, at time guaranty was executed, corporations were approximately \$2 million in arrears on loans from creditor to finance purchases of inventory, and corporations, which were distributors of creditor, were dependent on creditor for their business and, therefore, at that time wished to avoid termination of distribution agreements at all costs.—*Merillat Industries, Inc. v. Johnston*, 865 F.Supp. 60.—Guar 18.

D.Mass. 1994. Fact is “material” for summary judgment purposes if it might affect outcome of suit under governing substantive law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Sack v. Bentsen*, 858 F.Supp. 285, affirmed 51 F.3d 264, certiorari denied 116 S.Ct. 384, 516 U.S. 945, 133 L.Ed.2d 307.—Fed Civ Proc 2470.1.

D.Mass. 1994. For new evidence in disability insurance benefits case to be considered “material,” and, thus, for that evidence to provide basis for remand to Secretary of Health and Human Services (HHS), it must permit conclusion that Secretary’s final decision might reasonably have been different had evidence been present at time of decision. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).—*Bilodeau v. Shalala*, 856 F.Supp. 18.—Social S 149.

D.Mass. 1994. Factual issue is “material” for summary judgment purposes if it is capable of altering outcome of litigation. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Bouchard v. General Elec. Co.*, 849 F.Supp. 103.—Fed Civ Proc 2470.1.

D.Mass. 1993. On motion for summary judgment, fact is “material” if it might affect outcome of suit under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Petitti v. Com. of Mass. Dept. of Mental Health*, 859 F.Supp. 33.—Fed Civ Proc 2470.1.

D.Mass. 1993. Fact is “material” for summary judgment purposes if it might affect outcome of suit under governing substantive law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Quaker State Corp. v. Leavitt*, 839 F.Supp. 76.—Fed Civ Proc 2470.1.

D.Mass. 1993. Misstatement or omission is in prospectus “material” under federal and state securities laws if misstated or omitted fact was one likely to be viewed by reasonable investor as significantly altering total mix of available information. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77i(2); M.G.L.A. c. 110A, § 410(a)(2).—*Adams v. Hyannis Harborview, Inc.*, 838 F.Supp. 676, affirmed 73 F.3d 1164.—Sec Reg 25.62(4), 278.

D.Mass. 1993. For purposes of summary judgment, fact is "material" if it might affect outcome of suit under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Den Norske Bank AS v. First Nat. Bank of Boston, N.A.*, 838 F.Supp. 19, on reconsideration in part 1993 WL 773796, vacated 75 F.3d 49.—Fed Civ Proc 2470.1.

D.Mass. 1993. Only disputes over facts that might affect the outcome of the suit under the governing substantive law are "material" so as to properly preclude entry of summary judgment. Fed.Rules Civ.Proc.Rule 56, 56(c), 28 U.S.C.A.—*Woods v. Friction Materials, Inc.*, 836 F.Supp. 899, affirmed 30 F.3d 255.—Fed Civ Proc 2470.1.

D.Mass. 1993. Fact is "material" for purposes of summary judgment motion if it might affect outcome of suit under governing substantive law.—*Munro v. Kehr*, 835 F.Supp. 53.—Fed Civ Proc 2470.1.

D.Mass. 1993. Fact is "material" for purposes of motion for summary judgment if it might affect outcome of suit under governing substantive law.—*Spalding v. Reliance Standard Life Ins. Co.*, 835 F.Supp. 23.—Fed Civ Proc 2470.1.

D.Mass. 1993. Within meaning of disclosure requirements for prospectus regarding sale of securities, information is "material" when its disclosure alters total mix of facts available to investor and there is substantial likelihood that reasonable investor would consider it important to investment decision. Securities Act of 1933, §§ 11, 11(a), 12(2), 15 U.S.C.A. §§ 77k, 77k(a), 77l (2).—*In re New America High Income Fund Securities Litigation*, 834 F.Supp. 501, affirmed in part, reversed in part *Lucia v. Prospect Street High Income Portfolio, Inc.*, 36 F.3d 170.—Sec Reg 25.56.

D.Mass. 1993. Misrepresentation is "material" to claim of securities fraud only if misstated or omitted fact was one likely to be viewed by reasonable investor as significantly altering total mix of available information.—*Colby v. Hologic, Inc.*, 817 F.Supp. 204.—Sec Reg 60.46.

D.Mass. 1988. Misrepresentations about current status of merger negotiations can be "material" to investor decision for purposes of action under fraud provision of Securities Exchange Act. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*In re Atlantic Financial Management, Inc. Securities Litigation*, 718 F.Supp. 1003.—Sec Reg 60.46.

D.Mass. 1984. Under common law as declared in Massachusetts statute, statements by applicant that mislead underwriter as to nature of the risk being undertaken are considered "material." M.G.L.A. c. 175, § 186.—*Shapiro v. American Home Assur. Co.*, 584 F.Supp. 1245.—Insurance 2958.

D.Mass. 1984. Under common law as declared in Massachusetts statute, if insured falsely states facts that heighten risk being insured against, misrepresentation is "material." M.G.L.A. c. 175, § 186.—*Shapiro v. American Home Assur. Co.*, 584 F.Supp. 1245.—Insurance 2958.

D.Mass. 1984. Misrepresentations made by former president of insured in application for directors' and officers' liability policy, including gross overstatements of insured's earnings and false assertions that president knew of no act, error, or omission by insured's officials which might give rise to claim, increased insurer's risk of loss and, hence, were "material," thus invalidating policy under Massachusetts. M.G.L.A. c. 175, § 186.—*Shapiro v. American Home Assur. Co.*, 584 F.Supp. 1245.—Insurance 2998.

E.D.Mich. 1998. Under Michigan law, misrepresentation is deemed "material" thus voiding insurance policy, if it affected either acceptance of risk or hazard assumed by insurer, i.e., insured would not have issued exact same policy had true facts been revealed. M.C.L.A. § 500.2218.—*Dorsey v. Mutual of Omaha Ins. Co.*, 991 F.Supp. 868.—Insurance 2958.

E.D.Mich. 1996. Fact is "material" and precludes grant of summary judgment if proof of fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by the parties, and would necessarily affect application of appropriate principles of law to rights and obligations of the parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Madias v. Dearborn Federal Credit Union*, 929 F.Supp. 1059.—Fed Civ Proc 2470.1.

E.D.Mich. 1996. Fact is "material" and precludes summary judgment if proof of that fact would have the effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties and would necessarily affect the application of appropriate principles of law to the rights and obligations of the parties. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*E.E.O.C. v. Freedom Adult Foster Care Corp.*, 929 F.Supp. 256.—Fed Civ Proc 2470.1.

E.D.Mich. 1996. Party moving for summary judgment has burden of showing conclusively that no genuine issue of material fact exists; fact is "material" where proof of that fact would have effect of establishing or refuting essential element of cause of action or defense advanced by parties, i.e., disputed fact must be one that might affect outcome of suit under substantive law controlling issue. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Schollenberger v. Sears, Roebuck & Co.*, 925 F.Supp. 1239.—Fed Civ Proc 2470.1, 2544.

E.D.Mich. 1996. Fact is "material" and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties, and would necessarily affect application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Williams v. Van Buren Tp.*, 925 F.Supp. 1231.—Fed Civ Proc 2470.1.

E.D.Mich. 1996. Fact is "material" and precludes grant of summary judgment if proof of that fact would have the effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would

necessarily affect the application of appropriate principles of law to the rights and obligations of the parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. NBD Bank, N.A.*, 922 F.Supp. 1235.—Fed Civ Proc 2470.1.

E.D.Mich. 1996. A fact is “material,” for summary judgment purposes, where proof of that fact will have effect of establishing or refuting an essential element of cause of action or defense advanced by the parties; in other words, disputed fact must be one which might affect outcome of suit under substantive law controlling the issue. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Kramer v. Van Dyke Public Schools*, 918 F.Supp. 1100.—Fed Civ Proc 2470.1.

E.D.Mich. 1996. Fact is “material” and precludes grant of summary judgment if proof of fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties and would necessarily affect application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*John Harris & Associates, Inc. v. Day*, 916 F.Supp. 651.—Fed Civ Proc 2470.1.

E.D.Mich. 1996. A fact is “material” and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties and would necessarily affect application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Shpargel v. Stage & Co.*, 914 F.Supp. 1468.—Fed Civ Proc 2470.1.

E.D.Mich. 1996. Fact is “material” and precludes summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties, and would necessarily affect application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Rakoczy v. Travelers Ins. Co.*, 914 F.Supp. 166.—Fed Civ Proc 2470.1.

E.D.Mich. 1995. Fact is “material” and precludes granting of summary judgment if proof of that fact would have effect of establishing or refuting one of the essential elements of cause of action or defense asserted by parties, and would necessarily affect application of appropriate principle of law to rights and obligations of parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Freeman v. Unisys Corp.*, 898 F.Supp. 485.—Fed Civ Proc 2470.1.

E.D.Mich. 1995. Fact is “material” and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties and would necessarily affect application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Bunch v. Long John Silvers, Inc.*, 878 F.Supp. 1044.—Fed Civ Proc 2470.1.

E.D.Mich. 1993. Question of fact is “material,” and precludes grant of summary judgment, if proof of that fact would have the effect of establishing or refuting essential element of cause of action or defense asserted by parties, and would necessarily affect the application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Brown*, 833 F.Supp. 625.—Fed Civ Proc 2470.1.

E.D.Mich. 1993. Fact is “material” and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the party and would necessarily affect the application of appropriate principles of law to the rights and obligation of the parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Mathieu v. Chun*, 828 F.Supp. 495.—Fed Civ Proc 2470.1.

E.D.Mich. 1991. Fact is “material” and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting essential element of cause of action or defense asserted by parties and would necessarily affect application of appropriate principles of law to rights and obligations to parties. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Sheldon v. McGraw-Hill, Inc.*, 777 F.Supp. 1369.—Fed Civ Proc 2470.1.

E.D.Mich. 1991. Fact is “material” and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties, and would necessarily affect application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Janda v. Riley-Meggs Industries, Inc.*, 764 F.Supp. 1223.—Fed Civ Proc 2470.1.

E.D.Mich. 1990. Any statement by grand jury witness that could be interpreted as denying knowledge of fiancé's exchange of money and cocaine for stereo was not “material” to grand jury proceeding since witness, when reminded of transaction by prosecutor, not only admitted to having detailed knowledge of transaction but testified in great detail about it. 18 U.S.C.A. §§ 1623, 1623(a).—*U.S. v. Ball*, 738 F.Supp. 1073.—Perj 11(7).

E.D.Mich. 1983. Misstatements in purported investment adviser's newsletter, such as statement that touted company's assets as three and one-half million dollars when in fact its assets were \$253,000, that Mexican government was partner of another touted company in one of those company's mines, when it was not, and that third touted company had \$1,600,000 cash on hand, when in reality it only had \$400,000 to \$500,000, were “material” within meaning of section of Securities Exchange Act prohibiting the use of manipulative and deceptive devices in connection with the purchase or sale of any security. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Securities & Exchange Commission v. Blavin*, 557 F.Supp. 1304, affirmed S.E.C. v. Blavin, 760 F.2d 706.—Sec Reg 60.46.

E.D.Mich. 1946. The War Powers Act, authorizing the President to allocate "material" or facilities in such manner and upon such conditions as he shall deem necessary or appropriate in the public interest and to promote the national defense, authorizes the allocation of "food". Second War Powers Act 1942, § 301, 50 U.S.C.A. Appendix § 633, amending Act June 28, 1940, § 2, 50 U.S.C.A. Appendix, § 1152; Executive Order Dec. 5, 1942, No. 9280, 50 U.S.C.A. Appendix § 601 note.—U.S. v. Russell-Taylor, Inc., 64 F.Supp. 748.—War 303.

W.D.Mich. 2001. Under the federal securities laws, a statement or omission is "material" if there is a substantial likelihood that the statement or omission would be viewed by the reasonable investor as having significantly altered the total mix of information made available.—Krieger v. Gast, 179 F.Supp.2d 762.—Sec Reg 60.28(11), 60.46.

W.D.Mich. 2001. Corporate director's notice to minority shareholder of cash out merger did not have to disclose directors' relationship with consultant, on basis that such relationship was not "material" to a shareholder's decision to seek appraisal, since details of transaction that consultant was retained to facilitate were fully set forth in notice.—Krieger v. Gast, 179 F.Supp.2d 762.—Corp 584.

W.D.Mich. 1996. Substantive law identifies which facts are "material" for purposes of summary judgment and facts are "material" only if establishment thereof might affect outcome of lawsuit under governing substantive law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Martin v. A.O. Smith Corp., 931 F.Supp. 543.—Fed Civ Proc 2470.1.

W.D.Mich. 1995. On motion for summary judgment, substantive law identifies which facts are "material"; facts are "material" only if establishment thereof might affect outcome of lawsuit under governing substantive law; complete failure of proof concerning an essential element necessarily renders all other facts immaterial.—Javetz v. Board of Control, Grand Valley State University, 903 F.Supp. 1181, motion denied.—Fed Civ Proc 2470.1.

W.D.Mich. 1995. For purposes of summary judgment motion, issue of fact concerns "material" facts only if establishment thereof might affect outcome of lawsuit under governing substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Mauro v. Borgess Medical Center, 886 F.Supp. 1349, affirmed 137 F.3d 398, 1998 Fed.App. 67P, certiorari denied 119 S.Ct. 51, 525 U.S. 815, 142 L.Ed.2d 39.—Fed Civ Proc 2470.1.

W.D.Mich. 1993. For summary judgment purposes, issue of fact concerns "material" facts only if establishment thereof might affect outcome of lawsuit under governing substantive law.—Bomarko, Inc. v. Hemodynamics, Inc., 848 F.Supp. 1335.—Fed Civ Proc 2470.1.

W.D.Mich. 1993. For purposes of summary judgment motion, an issue of fact concerns "material" facts only if establishment thereof might affect outcome of lawsuit under governing substantive

law; complete failure of proof concerning essential element of claim necessarily renders all other facts immaterial.—Wexley v. Michigan State University, 821 F.Supp. 479, affirmed 25 F.3d 1052.—Fed Civ Proc 2470.1.

W.D.Mich. 1992. Issue of fact concerns "material" fact, thereby precluding summary judgment, only if establishment on disputed fact might affect outcome of lawsuit under governing substantive law.—Citizens Ins. Co. of America v. Proctor & Schwartz, Inc., 802 F.Supp. 133, affirmed 15 F.3d 558, 1994 Fed.App. 27P.—Fed Civ Proc 2470.1.

W.D.Mich. 1991. Issue of fact concerns "material" facts, for purposes of motion for summary judgment, only if establishment thereof might affect outcome of lawsuit under governing and substantive law; complete failure of proof concerning essential element of nonmoving party's case necessarily renders all other facts immaterial.—Michigan Coalition of Radioactive Materials Users v. Griepentrog, 769 F.Supp. 999, stay granted Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, reversed 954 F.2d 1174, rehearing denied.—Fed Civ Proc 2470.1.

W.D.Mich. 1986. A fact is "material" for the purpose of imposing liability on one who offers or sells securities by means of a prospectus which includes a misrepresentation, if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77I (2).—Platsis v. E.F. Hutton & Co. Inc., 642 F.Supp. 1277, affirmed 829 F.2d 13, certiorari denied 108 S.Ct. 1227, 485 U.S. 962, 99 L.Ed.2d 427.—Sec Reg 25.62(4).

D.Minn. 1999. Undisclosed or false information is "material," for purpose of determining existence of inequitable conduct sufficient to render patent unenforceable, when there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as patent.—Transclean Corp. v. Bridgewood Services, Inc., 77 F.Supp.2d 1045, affirmed in part, vacated in part 290 F.3d 1364, rehearing denied.—Pat 97.

D.Minn. 1999. Advertising claim is "material" and, therefore, actionable under Lanham Act and Minnesota law, if it is likely to influence purchasing decisions of consumers. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a); M.S.A. § 325D.44.—Transclean Corp. v. Bridgewood Services, Inc., 77 F.Supp.2d 1045, affirmed in part, vacated in part 290 F.3d 1364, rehearing denied.—Trade Reg 870(1).

D.Minn. 1996. Disputed fact is "material," for summary judgment purposes, if it must inevitably be resolved and resolution will determine outcome of case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Board of Trustees of Western Lake Superior Piping Industry Pension Fund v. American Benefit Plan Adm'rs, Inc., 925 F.Supp. 1424.—Fed Civ Proc 2470.1.

D.Minn. 1996. For summary judgment purposes, disputes over facts that might affect outcome of lawsuit according to applicable substantive law are "material." Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Norwest Bank Minnesota Nat. Ass'n v. Sween Corp., 916 F.Supp. 1494, affirmed in part, remanded in part 118 F.3d 1255, rehearing and suggestion for rehearing denied.—Fed Civ Proc 2470.1.

D.Minn. 1996. Disputes over facts which might affect outcome of lawsuit according to applicable substantive law are "material," for purposes of motion for summary judgment. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Hoekstra By and Through Hoekstra v. Independent School Dist. No. 283, St. Louis Park, Minn., 916 F.Supp. 941, affirmed 103 F.3d 624, certiorari denied 117 S.Ct. 1852, 520 U.S. 1244, 137 L.Ed.2d 1054.—Fed Civ Proc 2470.1.

D.Minn. 1995. Court in considering motion for summary judgment determines materiality of fact issue from substantive law governing claim; disputes over facts that might affect outcome of lawsuit according to applicable substantive law are "material." Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re TMJ Implants Products Liability Litigation, 880 F.Supp. 1311, affirmed 113 F.3d 1484.—Fed Civ Proc 2470.1.

D.Minn. 1994. Disputes as to facts that may affect outcome of lawsuit according to applicable substantive law are "material," for purposes of summary judgment. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Eldeeb v. University of Minnesota, 864 F.Supp. 905, affirmed 60 F.3d 423.—Fed Civ Proc 2470.1.

D.Minn. 1994. For purpose of summary judgment, disputes over facts that might affect outcome of lawsuit, according to applicable substantive law, are "material." Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Twin Cities Area New Party v. McKenna, 863 F.Supp. 988, reversed 73 F.3d 196, certiorari granted 116 S.Ct. 1846, 517 U.S. 1219, 134 L.Ed.2d 947, stay denied 116 S.Ct. 2542, 518 U.S. 1013, 135 L.Ed.2d 1063, reversed Timmons v. Twin Cities Area New Party, 117 S.Ct. 1364, 520 U.S. 351, 137 L.Ed.2d 589, on remand 117 F.3d 1423, affirmed 117 F.3d 1423.—Fed Civ Proc 2470.1.

D.Minn. 1994. Disputed fact is "material" for summary judgment purposes if it must inevitably be resolved and resolution will determine outcome of case, while dispute is "genuine" if evidence is such that reasonable jury could return verdict for non-moving party.—Flesner v. City of Ely, 863 F.Supp. 971.—Fed Civ Proc 2470.1.

D.Minn. 1994. Submission of false affidavits or declarations is necessarily "material" for purposes of patent doctrine of inequitable conduct, and inference of intent to deceive Patent and Trademark Office (PTO) would be strongly supported by submission of deceptive affidavits.—Schneider (Europe) AG v. SciMed Life Systems, Inc., 852 F.Supp. 813, appeal dismissed 26 F.3d 140, affirmed 60 F.3d 839, rehearing denied, in banc suggestion declined,

certiorari denied 116 S.Ct. 520, 516 U.S. 990, 133 L.Ed.2d 427.—Pat 97.

D.Minn. 1994. For purposes of summary judgment motion, disputed fact is "material" if it must inevitably be resolved and resolution will determine outcome of case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Petroskey v. Lommen, Nelson, Cole & Stageberg, P.A., 847 F.Supp. 1437, affirmed 40 F.3d 278.—Fed Civ Proc 2470.1.

D.Minn. 1993. Fact is "material" for purposes of summary judgment only when its resolution affects outcome of case.—Citizens State Bank of Big Lake v. Transamerica Ins. Co., 815 F.Supp. 309.—Fed Civ Proc 2470.1.

D.Minn. 1993. For summary judgment purposes, fact is "material" only when its resolution affects outcome of case.—Citizens State Bank of Big Lake v. Transamerica Ins. Co., 815 F.Supp. 309.—Fed Civ Proc 2470.1.

D.Minn. 1993. Insured's alleged misrepresentations in application for aviation policy that aircraft was newly purchased and that aircraft contained four rather than five seats did not have any bearing on accident giving rise to insurer's liability under policy, and, therefore, alleged misrepresentations did not "increase the risk of loss" and were not "material," and, thus, did not provide basis for finding under Minnesota statute that policy was void ab initio. M.S.A. § 60A.08, subd. 9.—Insurance Co. of State of Pennsylvania v. Hoffman, 814 F.Supp. 782.—Insurance 2990.

D.Minn. 1993. Fact is "material," for purposes of summary judgment, only when its resolution affects outcome of the case. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Adams v. West Pub. Co., 812 F.Supp. 925, affirmed 25 F.3d 635.—Fed Civ Proc 2470.1.

D.Minn. 1992. Chapter 7 debtors' failure to disclose ownership interests in several partnerships on the bankruptcy schedules was "material," as required for denial of discharge based on transferring or concealing property and on false oath, despite debtors' contentions that they had minimal interests in partnerships and that partnerships were of minimal value; debtors received substantial income from partnerships. Bankr.Code, 11 U.S.C.A. § 727(a)(2), (a)(4)(A).—In re Mathern, 141 B.R. 667.—Bankr 3276.1, 3284, 3289.

D.Minn. 1992. Disputed fact is "material" for purposes of summary judgment if it must inevitably be resolved and if resolution may determine outcome of case under governing law.—U.S. v. Arrowhead Refining Co., 829 F.Supp. 1078.—Fed Civ Proc 2470.1.

D.Minn. 1992. On motion for summary judgment, fact is "material" only when its resolution affects outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Woodroast Systems, Inc. v. Restaurants Unlimited, Inc., 793 F.Supp. 906, affirmed 994 F.2d 844.—Fed Civ Proc 2470.1.

D.Minn. 1992. A fact is “material,” for purposes of summary judgment rule, only when its resolution affects outcome of case. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Schiele v. Charles Vogel Mfg. Co., Inc.*, 787 F.Supp. 1541.—Fed Civ Proc 2470.1.

N.D.Miss. 1991. Under Mississippi law, misrepresentation in insurance application is “material,” such that it will enable insurer to void or rescind policy, if knowledge of true facts would have influenced prudent insurer in determining whether to accept risk.—*Massachusetts Mut. Life Ins. Co. v. Nicholson*, 775 F.Supp. 954.—Insurance 2958.

S.D.Miss. 2000. A false statement or claim is “material,” for purposes of civil False Claims Act (FCA) suit, if it has a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to which it was addressed. 31 U.S.C.A. § 3729(a).—*U.S. v. Southland Management Corp., Inc.*, 95 F.Supp.2d 629, reversed 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669, affirmed 326 F.3d 669.—U S 120.1.

S.D.Miss. 2000. Section 8 housing owners’ alleged false certification in housing assistance payment (HAP) vouchers that the property was in a “decent, safe, and sanitary” condition was not “material” for purposes of civil False Claims Act (FCA) claim since Department of Housing and Urban Development (HUD), as a matter of policy and practice, routinely made Section 8 housing assistance payments to owners of Section 8 property irrespective of whether the property was in a “decent, safe, and sanitary” condition, and HUD, in its authorization of housing assistance payments to the owners, did not consider the truth or falsity of the “decent, safe, and sanitary” certification. 31 U.S.C.A. § 3729(a).—*U.S. v. Southland Management Corp., Inc.*, 95 F.Supp.2d 629, reversed 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669, affirmed 326 F.3d 669.—U S 120.1.

S.D.Miss. 1999. For purposes of the False Claims Act, “material” is defined as an essential, important, or pertinent part of the claim. 31 U.S.C.A. § 3729 et seq.—*U.S. v. Intervest Corp.*, 67 F.Supp.2d 637.—U S 120.1.

S.D.Miss. 1999. Certifications on Housing Assistance Payment (HAP) vouchers, that apartment units subsidized by the United States Department of Housing and Urban Development (HUD) were in a “decent, safe, and sanitary” condition, were not substantively “material” to the government’s decision to make HAP payments and, thus, owner and manager of housing project did not violate the False Claims Act (FCA) by submitting false certifications. 31 U.S.C.A. § 3729 et seq.—*U.S. v. Intervest Corp.*, 67 F.Supp.2d 637.—U S 120.1.

S.D.Miss. 1995. Under Mississippi law, misrepresentation in insurance policy application is “material,” giving rise to right of insurer to rescind policy, if it affects either acceptance of risk or hazard assumed by insurer.—*State Life Ins. Co. v. O’Brien*,

921 F.Supp. 420, affirmed 108 F.3d 333.—Insurance 2958.

S.D.Miss. 1995. Under Mississippi law, misrepresentation in application for insurance policy is “material,” allowing insurer to void or rescind policy, if knowledge of true facts would have influenced prudent insurer in determining whether to accept risk. Miss.Code 1972, § 83–9–11(3).—*Wesley v. Union Nat. Life*, 919 F.Supp. 232.—Insurance 2958.

S.D.Miss. 1991. Misrepresentation in application for policy is regarded as “material,” so as to give rise to right to rescind under Mississippi law, if it affects either acceptance of risk or hazard assumed by insurer.—*Golden Rule Ins. Co. v. Hopkins*, 788 F.Supp. 295.—Insurance 2958.

E.D.Mo. 1999. For purposes of establishing a claim under Securities Exchange Commission (SEC) Rule 14a–9 prohibiting false or misleading proxy statements, a misrepresentation or omission in a proxy statement is “material” if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), as amended, 15 U.S.C.A. § 78n(a); 17 C.F.R. § 240.14a–9.—*In re BankAmerica Corp. Securities Litigation*, 78 F.Supp.2d 976.—Sec Reg 49.21, 49.22(2).

E.D.Mo. 1999. For purposes of establishing a securities fraud claim, an omission is “material” if disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.—*In re BankAmerica Corp. Securities Litigation*, 78 F.Supp.2d 976.—Sec Reg 27.42, 60.28(11).

E.D.Mo. 1999. Fact that bank participating in merger had given a substantial unsecured loan to an investment firm and suffered losses on such loan was “material” information to purchasers of stock in the other participating bank, as required for those purchasers to establish securities fraud claim under Rule 10b–5. Securities Exchange Act of 1934, § 10, as amended, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b–5.—*In re BankAmerica Corp. Securities Litigation*, 78 F.Supp.2d 976.—Sec Reg 49.26(3).

E.D.Mo. 1999. Exculpatory evidence is “material,” with result that failure of disclosure to defendant as required under *Brady* decision constitutes violation of defendant’s due process rights, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—*Reasonover v. Washington*, 60 F.Supp.2d 937.—Const Law 268(5).

E.D.Mo. 1997. Additional medical evidence offered by claimant in support of motion to remand related to time frame after date of administrative law judge’s (ALJ) decision finding that claimant was not disabled, and thus evidence was not “material” as required for remand. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—*Gooch v. Callahan*, 972 F.Supp. 497.—Social S 149.

E.D.Mo. 1992. Requirement of patent applicants and their counsel to maintain duty of candor to the Patent and Trademark Office (PTO) during prosecution of patent is based on rule providing that those who practice before the PTO have a duty to disclose information of which they are aware and which is material to the examination of the application; known information is "material" if there is a substantial likelihood that a reasonable examiner would consider it important, but applicant for patent is under no obligation to disclose all pertinent prior art or other pertinent information of which he is aware.—*Conopco, Inc. v. May Dept. Stores Co.*, 784 F.Supp. 648, opinion amended 797 F.Supp. 740, reversed 648 F.3d 1556, rehearing denied, in banc suggestion declined, certiorari denied 115 S.Ct. 1724, 514 U.S. 1078, 131 L.Ed.2d 582.—Pat 97.

E.D.Mo. 1983. A false statement or an omission in a proxy statement is "material" within solicitation regulation promulgated pursuant to the Securities Exchange Act if there is substantial likelihood that a reasonable shareholder would consider it important deciding how to vote; there must be a substantial likelihood that disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—*Morrissey v. County Tower Corp.*, 559 F.Supp. 1115, affirmed 717 F.2d 1227.—Sec Reg 49.22(2).

W.D.Mo. 1983. A fact is deemed "material" within rule relating to securities fraud if there is a substantial likelihood that a reasonable investor would consider it significant or important when making a decision to buy or sell. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Rose v. Arkansas Valley Environmental & Utility Authority*, 562 F.Supp. 1180.—Sec Reg 60.28(11).

W.D.Mo. 1975. Declaration is "material" within meaning of statute providing penalty for perjury before court or grand jury if it tends to influence, impede or hamper investigations of matter which grand jury is investigating and which grand jury has authority to investigate. 18 U.S.C.A. § 1623.—*U.S. v. Lasater*, 403 F.Supp. 208, affirmed 535 F.2d 1041.—Perj 11(7).

D.Neb. 1999. For purposes of fraud in contract setting, misrepresentation is "material," under Nebraska law, if it would be likely to induce reasonable person to manifest his assent, or if maker knows that it would be likely to induce recipient to do so.—*Lincoln Ben. Life Co. v. Edwards*, 45 F.Supp.2d 722, affirmed 243 F.3d 457.—Fraud 18.

D.Neb. 1996. Fact is "material" for summary judgment purposes only when its resolution affects outcome of case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Karstens v. International Gamco, Inc.*, 939 F.Supp. 1430.—Fed Civ Proc 2470.1.

D.Neb. 1995. Fact is "material" for summary judgment purposes only when its resolution affects outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Townsend v. U.S.*, 889 F.Supp. 369.—Fed Civ Proc 2470.1.

D.Nev. 1994. Fact omitted from proxy materials is "material," for purposes of proxy solicitation rule prohibiting materially false or misleading information, if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a); 17 C.F.R. § 240.14a-9.—*Shoen v. AMERCO*, 885 F.Supp. 1332, vacated pursuant to settlement, modified 1994 WL 904199.—Sec Reg 49.22(2).

D.Nev. 1994. For purposes of summary judgment, "material" issue of fact is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*State of Nev. ex rel. Dept. of Ins. v. Contract Services Network, Inc.*, 873 F.Supp. 385.—Fed Civ Proc 2470.1.

D.Nev. 1989. For summary judgment purposes, "material" fact is one that is relevant to element of claim or defense and whose existence might affect outcome of suit. Fed.Rules Civ.Proc., Rule 56, 28 U.S.C.A.—*U.S. for Use of Las Vegas Bldg. Materials, Inc. v. Bernadot*, 719 F.Supp. 936.—Fed Civ Proc 2470.1.

D.N.H. 1995. In context of summary judgment motion, "genuine" means that evidence about fact is such that reasonable jury could resolve point in favor of nonmoving party and "material" means that the fact is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Boldini v. Postmaster General U.S. Postal Service*, 928 F.Supp. 125.—Fed Civ Proc 2470.1.

D.N.H. 1995. In context of summary judgment, "genuine" means that evidence about fact is such that reasonable jury could resolve point in favor of non-moving party and "material" means that fact is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Presutti v. Felton Brush, Inc.*, 927 F.Supp. 545.—Fed Civ Proc 2470.1.

D.N.H. 1994. Only disputes over facts that might affect outcome of suit are "material" for summary judgment purposes. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Phelan v. Thompson*, 889 F.Supp. 517.—Fed Civ Proc 2470.1.

D.N.H. 1992. For purposes of summary judgment, dispute of fact is "material" if it affects outcome of litigation and is "genuine," if it is manifested by substantial evidence going beyond allegation of complaint. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*K.J. Quinn & Co., Inc. v. Continental Cas.*, 806 F.Supp. 1037.—Fed Civ Proc 2470.1.

D.N.H. 1991. "Material" issue of fact exists precluding summary judgment where factual dispute affects outcome of suit, in the sense that it needs to be resolved before related legal issues can be decided. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Thomas v. King Ridge, Inc.*, 771 F.Supp. 478.—Fed Civ Proc 2470.1.

D.N.H. 1986. Factual dispute is "material," for purpose of party's motion for summary judgment,

when it affects outcome of litigation; “genuine,” when it is manifested by substantial evidence going beyond allegations of complaint. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*DesRoches v. U.S. Postal Service*, 631 F.Supp. 1375.—Fed Civ Proc 2470.1.

D.N.H. 1984. For purposes of determining summary judgment motion, dispute of fact is “material” if it affects outcome of litigation and is “genuine” if manifested by substantial evidence going beyond allegations of complaint.—*U.S. v. Mottolo*, 629 F.Supp. 56.—Fed Civ Proc 2470.1.

D.N.H. 1983. Summary judgment is proper only if, viewing record in light most favorable to non-moving party, no genuine issue of material fact exists and moving party is entitled to judgment as matter of law; dispute of fact is “material” if it affects outcome of litigation, and is “genuine” if manifested by substantial evidence going beyond allegations of complaint.—*Fiumara v. Higgins*, 572 F.Supp. 1093.—Fed Civ Proc 2470.1, 2470.4, 2547.1.

D.N.H. 1983. For purposes of summary judgment, disputed fact is “material” when it affects outcome of litigation, and is “genuine” if made manifest by substantial evidence going beyond allegations of complaint. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Vandegrift v. American Brands Corp.*, 572 F.Supp. 496.—Fed Civ Proc 2470.1.

D.N.J. 2001. For purposes of a securities fraud claim under Rule 10b–5, a misleading statement or omission is “material” if there is a substantial likelihood that a reasonable investor would have viewed the statement or omission as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—*In re Nice Systems, Ltd. Securities Litigation*, 135 F.Supp.2d 551.—Sec Reg 60.28(11), 60.46.

D.N.J. 2000. Evidence is “material,” for purposes of *Brady* violation, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Marshall v. Hendricks*, 103 F.Supp.2d 749, affirmed in part, reversed in part 307 F.3d 36, certiorari denied 123 S.Ct. 1492, 155 L.Ed.2d 234.—Crim Law 700(2.1).

D.N.J. 2000. Factual dispute is “genuine,” for summary judgment purposes, if a reasonable jury could return a verdict for the non-movant, and it is “material” if, under the substantive law, it would affect the outcome of the suit. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Cahill v. City of New Brunswick*, 99 F.Supp.2d 464.—Fed Civ Proc 2470.1.

D.N.J. 2000. Statement is “material,” for purposes of proving futures and options fraud under the Commodities Exchange Act (CEA), if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. Commodity Exchange Act, §§ 4b(a), 4c(b), as amended, 7 U.S.C.A. §§ 6b(a), 6c(b); 17 C.F.R. § 33.10.—Commodity Futures

Trading Com’n v. Rosenberg, 85 F.Supp.2d 424.—Com Fut 17.

D.N.J. 1999. Dispute of fact is “genuine” under the rule governing summary judgment motions if the evidence is such that a reasonable jury could return a verdict for the nonmovant party, and the fact is “material” under the rule only if it might affect the outcome of the suit under the applicable rule of law; in other words, disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Rastelli Bros., Inc. v. Netherlands Ins. Co.*, 68 F.Supp.2d 440, reconsideration denied 68 F.Supp.2d 448, motion denied 68 F.Supp.2d 451.—Fed Civ Proc 2470.1.

D.N.J. 1999. In the context of the securities fraud laws, a misstatement or omission is “material” if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—*S.E.C. v. Chester Holdings, Ltd.*, 41 F.Supp.2d 505.—Sec Reg 60.28(11), 60.46.

D.N.J. 1998. A misleading statement or omission is “material,” for purposes of Securities Exchange Act § 10(b) and Rule 10b–5, if there is a substantial likelihood that the reasonable investor would have viewed the statement or omission as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—*In re MobileMedia Securities Litigation*, 28 F.Supp.2d 901.—Sec Reg 60.28(11), 60.46.

D.N.J. 1998. For violation of insider trading prohibitions of the Securities Exchange Act, rule 10b–5, and the Securities Act, information that the seller possesses while trading must be material; information is “material” if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—*S.E.C. v. Antar*, 15 F.Supp.2d 477.—Sec Reg 27.42, 60.28(11), 60.46.

D.N.J. 1996. Concealed facts are “material” for purposes of fraud discharge exception if reasonable person would attach importance to alleged omissions in determining course of action. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—*In re Reynolds*, 193 B.R. 195, on remand 197 B.R. 204.—Bankr 3353(4).

D.N.J. 1996. For purposes of rescinding insurance policy for making material misrepresentations in application, misrepresentation is “material” if it naturally and reasonably influenced the underwriter’s judgment in making the contract at all, or in estimating degree or character of the risk, or in fixing premium rate.—*Booker v. Blackburn*, 942 F.Supp. 1005.—Insurance 2958.

D.N.J. 1996. Fact is “material” for purposes of summary judgment if it might affect outcome of

case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Herbert v. Newton Memorial Hosp., 933 F.Supp. 1222, affirmed 116 F.3d 468.—Fed Civ Proc 2470.1.

D.N.J. 1996. Fact is “material,” for summary judgment purposes, only if it will affect outcome of lawsuit under applicable law. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—W.P. v. Poritz, 931 F.Supp. 1199, reversed E.B. v. Verniero, 119 F.3d 1077, rehearing denied 127 F.3d 298, rehearing denied 127 F.3d 298, certiorari denied 118 S.Ct. 1039, 522 U.S. 1109, 140 L.Ed.2d 105, certiorari denied Verniero v. W. P., 118 S.Ct. 1039, 522 U.S. 1110, 140 L.Ed.2d 105.—Fed Civ Proc 2470.1.

D.N.J. 1996. For purposes of summary judgment motion, disputed fact is “material” if it might affect outcome of suit under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Pitak v. Bell Atlantic Network Services, Inc., 928 F.Supp. 1354.—Fed Civ Proc 2470.1.

D.N.J. 1995. Fact is “material,” for purposes of deciding summary judgment motion, if it influences outcome of action under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Countryside Oil Co., Inc. v. Travelers Ins. Co., 928 F.Supp. 474.—Fed Civ Proc 2470.1.

D.N.J. 1995. Facts are “material” for Securities Exchange Act § 10(b) and Rule 10b-5 antifraud purposes, if reasonable man would attach importance to facts in determining his choice of action in transaction in question. Securities Exchange Act of 1934, § 10(a), as amended, 15 U.S.C.A. § 78j(a); 17 C.F.R. § 240.10b-5.—In re Merrill Lynch Securities Litigation, 911 F.Supp. 754, reversed Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 135 F.3d 266, certiorari denied Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Kravitz, 119 S.Ct. 44, 525 U.S. 811, 142 L.Ed.2d 34.—Sec Reg 60.28(11).

D.N.J. 1995. For summary judgment purposes, fact is considered “material” when it affects outcome under applicable law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—McGarry v. Resolution Trust Corp., 909 F.Supp. 241.—Fed Civ Proc 2470.1.

D.N.J. 1995. Statement or omission is “material,” as required to support claim of securities fraud, if there is substantial likelihood that, under the circumstances, omitted fact would have assumed actual significance in deliberations of reasonable shareholder; fact is material if its disclosure would have significantly altered total mix of information available. Securities Act of 1933, §§ 11, 12, 15 U.S.C.A. §§ 77, 77l; Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 77j(b).—Zucker v. Quasha, 891 F.Supp. 1010, affirmed 82 F.3d 408, certiorari denied 117 S.Ct. 85, 519 U.S. 825, 136 L.Ed.2d 42.—Sec Reg 25.21(3), 25.62(4), 60.28(11), 60.46.

D.N.J. 1994. Whether fact is “material,” for purpose of summary judgment motion, is determined by substantive law defining claims. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Microsoft

Corp. v. CMOS Technologies, Inc., 872 F.Supp. 1329.—Fed Civ Proc 2470.1.

D.N.J. 1994. Impeachment evidence may not be “material” for purposes of *Brady* where witness who might have been impeached was extensively and vigorously cross-examined by defense counsel.—U.S. v. Wright, 845 F.Supp. 1041, affirmed 46 F.3d 1120.—Crim Law 700(4).

D.N.J. 1994. For purposes of *Brady* doctrine, evidence is “material” if there is reasonable probability that, had evidence been disclosed, result of trial would have been different; “reasonable probability” is probability sufficient to undermine confidence in the outcome.—U.S. v. Galvis-Valderamma, 841 F.Supp. 600.—Crim Law 700(2.1).

D.N.J. 1993. Fact is “material” for purposes of summary judgment motion if it influences outcome under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Brounstein v. American Cat Fanciers Ass’n, 839 F.Supp. 1100.—Fed Civ Proc 2470.1.

D.N.J. 1993. Whether fact is “material” for summary judgment purposes is determined by substantive law defining the claims. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—D.R. by M.R. v. East Brunswick Bd. of Educ., 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145, subsequently affirmed 109 F.3d 896, certiorari denied 118 S.Ct. 415, 522 U.S. 968, 139 L.Ed.2d 318.—Fed Civ Proc 2470.1.

D.N.J. 1993. Fact is “material,” for purposes of summary judgment, if it influences outcome under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Prudential Ins. Co. of America v. U.S. Gypsum Co., 828 F.Supp. 287.—Fed Civ Proc 2470.1.

D.N.J. 1993. For purposes of summary judgment, issue is “genuine” if reasonable jury could possibly hold in nonmovant’s favor with regard to that issue and fact is “material” if it influences outcome under governing law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Marsa v. Metrobank for Sav., F.S.B., 825 F.Supp. 658, affirmed 26 F.3d 122.—Fed Civ Proc 2470.1.

D.N.J. 1993. Fact is “material” for summary judgment purposes if it influences outcome under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Katz v. AIWA America, Inc., 818 F.Supp. 730.—Fed Civ Proc 2470.1.

D.N.J. 1992. In securities fraud context, omitted fact is “material” if there is substantial likelihood investor would consider it important in making investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—U.S. v. Canistraro, 800 F.Supp. 30.—Sec Reg 60.28(11).

D.N.J. 1992. For summary judgment purposes, disputed fact is “material” only if it would affect outcome of suit.—Stoeco Development, Ltd. v. Department of Army Corps of Engineers of U.S., 792 F.Supp. 339.—Fed Civ Proc 2470.1.

D.N.J. 1991. Fact is “material” for purposes of summary judgment motion only if it will affect

outcome of lawsuit under equitable law, and dispute over material fact is "genuine" if evidence is such that reasonable fact finder could return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Hawke Associates v. City Federal Sav. Bank*, 787 F.Supp. 423.—Fed Civ Proc 2470.1.

D.N.J. 1990. Evidence favorable to accused is considered "material," such that it cannot be suppressed under *Brady*, if there exists reasonable probability that, had evidence been disclosed to defense counsel, proceedings would have had different result. U.S.C.A. Const.Amend. 14.—*Telepo v. Scheidemantel*, 737 F.Supp. 299.—Crim Law 700(2.1).

D.N.J. 1989. Fact is "material" only if it will affect the outcome of the law suit under the applicable law, and dispute over material facts is "genuine" if the evidence is such that a reasonable fact finder could return a verdict for the nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Maguire v. Hughes Aircraft Corp.*, 725 F.Supp. 821, affirmed 912 F.2d 67, rehearing denied.—Fed Civ Proc 2470.1.

D.N.J. 1989. Mere existence of some alleged factual dispute between the parties is an insufficient basis on which to deny motion for summary judgment; fact is "material" only if it will affect the outcome of a lawsuit under the applicable law, and dispute over a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Leonen v. Johns-Manville Corp.*, 717 F.Supp. 272.—Fed Civ Proc 2470.1.

D.N.J. 1989. For purpose of deciding whether to grant summary judgment, fact is "material" only if it will affect outcome of lawsuit under applicable law, and dispute over material fact is "genuine" if evidence is such that reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Baxter v. AT & T Communications*, 712 F.Supp. 1166.—Fed Civ Proc 2470.1.

E.D.N.Y. 2002. Omission from prospectus is "material," within meaning of Securities Act provision imposing liability for fraud, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Act of 1933, § 11(a), 15 U.S.C.A. § 77k(a).—*In re Sterling Foster & Co., Inc.*, Securities Litigation, 222 F.Supp.2d 216.—Sec Reg 25.21(3), 25.62(4).

E.D.N.Y. 2002. Misrepresentation in prospectus is "material," within meaning of Securities Act provision imposing liability for fraud, when investor would attach importance to it in making investment decision. Securities Act of 1933, § 11(a), 15 U.S.C.A. § 77k(a).—*In re Sterling Foster & Co., Inc.*, Securities Litigation, 222 F.Supp.2d 216.—Sec Reg 25.21(3), 25.62(4).

E.D.N.Y. 2002. A fact is "material" for purposes of securities fraud claim, where there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—*In re Ashanti Goldfields Securities Litigation*, 184 F.Supp.2d 247.—Sec Reg 60.28(11).

E.D.N.Y. 2002. For omission to be "material," as required to support § 10(b) or Rule 10b-5 claim, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Cyber Media Group, Inc. v. Island Mortgage Network, Inc.*, 183 F.Supp.2d 559.—Sec Reg 60.28(11).

E.D.N.Y. 2002. Misstatement of "material" fact that is subject of claim under § 10(b) or Rule 10b-5 must relate to facts that affect probable future of company, and that may affect desire of investors to buy, sell or hold company's securities. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Cyber Media Group, Inc. v. Island Mortgage Network, Inc.*, 183 F.Supp.2d 559.—Sec Reg 60.46.

E.D.N.Y. 2001. Omitted fact will be considered "material," for purposes of the Securities Act, if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Securities Act of 1933, § 12(a)(2), 15 U.S.C.A. § 77l(a)(2).—*In re MetLife Demutualization Litigation*, 156 F.Supp.2d 254.—Sec Reg 25.62(4).

E.D.N.Y. 2001. Although victim's repudiated, unsworn post-trial recantation of his trial testimony that defendants robbed him at gunpoint was "material," in that victim was only prosecution witness with personal knowledge of robbery, recantation was unreliable, given that, in federal habeas evidentiary hearing, victim reaffirmed his trial testimony, which was corroborated by trial testimony of codefendant's wife and by codefendant's implausible version of events related at hearing; therefore, state court's rejection of postconviction relief claim that leaving petitioner's conviction in place, despite recantation, violated due process was reasonable application of established federal law and did not warrant federal habeas relief. U.S.C.A. Const. Amend. 14.—*Penick v. Filion*, 144 F.Supp.2d 145.—Hab Corp 500.1.

E.D.N.Y. 2001. If a proposition of fact is not required to be proved under the applicable rule of substantive law, and thus is not "material," any evidence introduced solely to prove or disprove it, directly or indirectly, is "irrelevant" and inadmissible; an evidentiary proposition is considered "relevant" only if it is logically related, either directly or through an inferential chain of proof, to at least one of the formal elements of the charges made or defenses raised in the case—e.g., a material propo-

sition of fact. Fed.Rules. Evid.Rules 401, 402, 28 U.S.C.A.—Blue Cross and Blue Shield of New Jersey, Inc. v. Philip Morris, Inc., 138 F.Supp.2d 357.—Evid 99, 143.

E.D.N.Y. 2000. An omission in a registration statement is “material,” for purposes of false registration statement liability under the Securities Act, if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of the information made available. Securities Act of 1933, § 11, 15 U.S.C.A. § 77k.—In re Twinlab Corp. Securities Litigation, 103 F.Supp.2d 193.—Sec Reg 25.21(3).

E.D.N.Y. 2000. Omitted information is “material,” for purposes of a securities fraud suit under § 10(b), if there is a substantial likelihood that the disclosure of the omission would have been viewed by a reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re MCI Worldcom, Inc. Securities Litigation, 93 F.Supp.2d 276.—Sec Reg 60.28(11).

E.D.N.Y. 2000. “Material” false oath, within meaning of statutory discharge exception, is one bearing a relationship to debtor’s business transactions or estate, or which would lead to discovery of debtor’s assets, business dealings or existence or disposition of property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Murray, 249 B.R. 223.—Bankr 3282.1.

E.D.N.Y. 2000. Chapter 7 debtor’s intentional false statements on his bankruptcy schedules about assets that were part of bankruptcy estate, even if they were possibly exempt, bore a clear relationship to estate and thereby qualified as “material” misstatements, for purpose of “false oath” discharge exception. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Murray, 249 B.R. 223.—Bankr 3283.

E.D.N.Y. 1999. To be “material,” for purposes of federal securities fraud, information need not be such that reasonable investor would necessarily change his investment decision based on information, as long as reasonable investor would have viewed it as significantly altering total mix of information available. Securities Act of 1933, § 17(a)(1), 15 U.S.C.A. § 77q(a)(1); Securities Exchange Act of 1934, §§ 10(b), 13, 15 U.S.C.A. §§ 78j(b), 78m; 17 C.F.R. §§ 210.1-01(a)(2), 210.4-01(a)(1), 240.10b-5, 240.13a, 249.308a.—S.E.C. v. Caserta, 75 F.Supp.2d 79.—Sec Reg 27.42, 60.28(11), 60.46.

E.D.N.Y. 1999. Fact is “material,” as required to support securities fraud claim alleging false or misleading statement of material fact, if there is a substantial likelihood that a reasonable investor would view it as having significantly altered the total mix of information available. Securities Exchange Act of 1934, § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.—Ressler v. Liz Claiborne, Inc., 75 F.Supp.2d 43.—Sec Reg 60.46.

E.D.N.Y. 1999. Allegedly exculpatory evidence is “material,” for purposes of *Brady* requirement that it be disclosed to defense, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Volpe, 62 F.Supp.2d 887, vacated U.S. v. Schwarz, 283 F.3d 76.—Crim Law 700(2.1).

E.D.N.Y. 1997. Undisclosed evidence is “material” for purposes of *Brady*, and prosecution’s failure to disclose evidence will warrant reversal, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—Orena v. U.S., 956 F.Supp. 1071.—Crim Law 700(2.1).

E.D.N.Y. 1997. Information not disclosed to the defense is “material,” and creates constitutional error warranting new trial under *Brady*, only when that information creates reasonable doubt that did not otherwise exist.—Orena v. U.S., 956 F.Supp. 1071.—Crim Law 700(2.1).

E.D.N.Y. 1996. Factual dispute as to who actually shook baby was not “material,” for purposes of Child Welfare Administration’s motion for summary judgment on parents’ claim under § 1983 for Administration’s allegedly erroneous assertion of custody over baby; rather, issue was whether Administration had reasonable belief that emergency existed and warranted assertion of custody over baby. 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Dietz v. Damas, 948 F.Supp. 198.—Fed Civ Proc 2491.5.

E.D.N.Y. 1996. Factual dispute as to amount of milk baby was able to drink when he awoke from his nap was not “material,” for purposes of Child Welfare Administration’s motion for summary judgment on parents’ § 1983 claim based on removal of child from their custody after child was diagnosed with Whiplash Shaken Infant Syndrome, absent showing that Administration worker had any reason to know that this information might prove significant in determining time that the shaking took place and, thus, who was the abuser. 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Dietz v. Damas, 948 F.Supp. 198.—Fed Civ Proc 2491.5.

E.D.N.Y. 1995. Evidence is “material,” for purposes of criminal procedure rule requiring defendant’s request for discovery to be for documents which are “material” to preparation of defense, if pretrial disclosure will enable defendant significantly to alter quantum of proof in his favor. Fed. Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Ashley, 905 F.Supp. 1146.—Crim Law 627.6(2).

E.D.N.Y. 1995. To establish showing of materiality of evidence requested by defendant from Government, defendant must offer more than conclusory allegation that requested evidence is “material.” Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Ashley, 905 F.Supp. 1146.—Crim Law 627.8(3).

E.D.N.Y. 1995. Merely because Government might be able to use documents to rebut defense

position did not mean that they were "material" and had to be disclosed to defendant. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Ashley, 905 F.Supp. 1146.—Crim Law 627.6(2).

E.D.N.Y. 1994. Under Securities Exchange Act's proxy solicitation requirements, consent letter to investors in real estate joint venture, soliciting consent to modification of net lease on building owned by venture, was not required to disclose that agents and law firm representing venture were defendants in pending actions alleging violations of securities laws and breaches of fiduciary duties; actions consisted of unproven allegations at time of consent letter and, thus, were not "material" facts that were required to be included in proxy solicitations. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—Kahn v. Wien, 842 F.Supp. 667, affirmed 41 F.3d 1501.—Sec Reg 49.22(7).

E.D.N.Y. 1994. For purposes of Massachusetts statute setting forth conditions under which misrepresentation can defeat or avoid insurance policy, statements misleading insurer as to nature of risk typically are considered "material." M.G.L.A. c. 175, § 186.—U.S. Exp., Inc. v. Intercargo Ins. Co., 841 F.Supp. 1328.—Insurance 2958.

E.D.N.Y. 1993. Witness' alleged perjury in another criminal case was not "material" in constitutional sense, so that defendant, who was convicted of racketeering, was not entitled to new trial on basis of government's failure to disclose perjury, notwithstanding contention that witness' testimony was critical and was only way to harmonize defendant's conviction with codefendant's acquittal; audiotapes, videotapes, photographs, and testimony of other witnesses supported jury's verdict, references to codefendant on audiotapes were infrequent and oblique, fleeting glimpses of codefendant in videotapes and photographs were de minimis compared to those of defendant, witness' testimony directly implicating defendant consisted of less than dozen lines in 1700-page transcript, as to codefendant, witness testified only that he did not know whether or not codefendant was involved in racketeering activities charged, and witness was subjected to vigorous cross-examination concerning his criminal past and discrepancies in his testimony.—U.S. v. Gambino, 835 F.Supp. 74, affirmed 59 F.3d 353, certiorari denied 116 S.Ct. 1671, 517 U.S. 1187, 134 L.Ed.2d 776.—Crim Law 919(1).

E.D.N.Y. 1987. Information, that large home health care company's earnings were supplemented by fraudulent medicaid scheme, was "material," and directors and officers of company were required to disclose that information on its registration statements and annual reports. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Greenfield v. Professional Care, Inc., 677 F.Supp. 110.—Sec Reg 60.28(13).

E.D.N.Y. 1971. "Material" within statute which imposes civil liability for misrepresentations included in registration statement means what a reasonably prudent investor reasonably ought to know before buying security. Securities Act of 1933, § 11, 15 U.S.C.A. § 77k.—Feit v. Leasco Data

Processing Equipment Corp., 332 F.Supp. 544.—Sec Reg 25.62(4).

N.D.N.Y. 1998. Misrepresentation made by insured in his or her application will be "material" if knowledge by insurance company of the misrepresented fact would have resulted in refusal to issue the same exact policy. N.Y.McKinney's Insurance Law § 3105(b).—Nationwide Mut. Fire Ins. Co. v. Pascarella, 993 F.Supp. 134.—Insurance 2958.

N.D.N.Y. 1996. Physician's report was not "material," as statutorily required for court to order Secretary of Health and Human Services (HHS) to consider additional evidence; except for notation that Supplemental Security Income (SSI) disability claimant's condition had lasted more than one year, physician's report did not discuss claimant's condition during relevant time period, and reports revealed steady improvement in claimant's condition. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g); 20 C.F.R. § 416.330.—Schaal v. Commissioner of Social Sec., 969 F.Supp. 822, vacated 134 F.3d 496, 149 A.L.R. Fed. 679.—Social S 149.

N.D.N.Y. 1996. X-ray and CT scans administered after hearing decision in Supplemental Security Income (SSI) disability proceeding did not indicate that claimant might have suffered from osteoarthritis of lumbosacral spine, discogenic disease, or degenerative changes in lumbosacral spine during relevant period, and thus, scans were not "material," as statutorily required for court to order Secretary of Health and Human Services (HHS) to consider additional evidence. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g); 20 C.F.R. § 416.330.—Schaal v. Commissioner of Social Sec., 969 F.Supp. 822, vacated 134 F.3d 496, 149 A.L.R. Fed. 679.—Social S 149.

N.D.N.Y. 1996. Neither grant of Supplemental Security Income (SSI) benefits to claimant based upon her second application nor physician's report were relevant to claimant's condition during time period for which benefits were denied on first application, and thus, neither were "material," as statutorily required for court to order Commissioner of Social Security to take additional evidence; second application determined that claimant's period of disability began after date of denial of benefits on first application, and physician's report made no findings relevant to period for which benefits were denied. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).—Schaal v. Commissioner of Social Sec., 969 F.Supp. 822, vacated 134 F.3d 496, 149 A.L.R. Fed. 679.—Social S 149.

N.D.N.Y. 1995. Evidence is "material" for purposes of due process violation based upon prosecutor's withholding of exculpatory information, only there is reasonable probability that disclosure of information to defense would have changed result of proceeding. U.S.C.A. Const.Amend. 14.—Beverly v. Walker, 899 F.Supp. 900, affirmed 118 F.3d 900, certiorari denied 118 S.Ct. 211, 522 U.S. 883, 139 L.Ed.2d 147.—Const Law 268(5).

N.D.N.Y. 1994. Fact is "material," and thus must be accepted as true in reviewing motion to dismiss for failure to state claim, when its resolution

would affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—*Doolittle v. Ruffo*, 882 F.Supp. 1247.—Fed Civ Proc 1831, 1835.

N.D.N.Y. 1992. Testimony in trial need not bear directly on elements of offense charged in indictment in order to be considered “material” for purposes of perjury prosecution; statements concerning collateral matters may be material as well.—*Sears v. U.S.*, 791 F.Supp. 950.—Perj 11(2).

N.D.N.Y. 1979. For purposes of the securities laws, facts will be regarded as “material” whenever there is a substantial likelihood that disclosure of the omitted fact would have assumed significance in the deliberations of a reasonable investor; or, stated alternatively, a fact is deemed “material” if its disclosure would have been viewed by a reasonable investor as having significantly altered the “total mix” of information made available. Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b) as amended 15 U.S.C.A. § 78j(b).—*S.E.C. v. Paro*, 468 F.Supp. 635.—Sec Reg 27.42.

S.D.N.Y. 2002. As provided in the Restatement (Second) of Torts, a matter is “material,” for purposes of a false representation claim, if (1) a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question, or (2) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it. Restatement (Second) of Torts § 538.—*Chase Manhattan Bank v. Motorola, Inc.*, 184 F.Supp.2d 384.—Fraud 18.

S.D.N.Y. 2001. For purposes of securities action alleging a prospectus contained material misrepresentations or omissions, a fact is “material” if there is a substantial likelihood that a reasonable person would consider it important in deciding whether to buy or sell shares. Securities Act of 1933, §§ 11, 12(a)(2), 15 U.S.C.A. §§ 77k, 77l(a)(2).—*Sedighim v. Donaldson, Lufkin & Jenrette, Inc.*, 167 F.Supp.2d 639.—Sec Reg 25.62(4).

S.D.N.Y. 2001. Omission of fact from securities registration statement is “material” under Securities Act if there is substantial likelihood that disclosure of fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Act of 1933, § 11, 15 U.S.C.A. § 77k.—*In re Livent, Inc. Noteholders Securities Litigation*, 151 F.Supp.2d 371.—Sec Reg 25.21(3).

S.D.N.Y. 2000. A misrepresentation claim under Federal Trade Commission Act (FTC Act) is considered “material,” if it involves information important to consumers and, hence, is likely to affect their choice of, or conduct regarding a product. Federal Trade Commission Act, § 5(a), as amended, 15 U.S.C.A. § 45(a).—*F.T.C. v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502.—Trade Reg 763.1.

S.D.N.Y. 2000. Misrepresentation of fact is “material,” under Securities Act provisions barring misrepresentations in registration statements and prospectuses, when investor would attach importance to it in making investment decision. Securities Act of 1933, §§ 11, 12(a)(2), 15 U.S.C.A. §§ 77k, 77l(a)(2).—*Steinberg v. PRT Group, Inc.*, 88 F.Supp.2d 294.—Sec Reg 25.21(3), 25.62(4).

S.D.N.Y. 2000. Omission is “material,” under Securities Act provisions barring material omissions in registration statements and prospectuses, when there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Act of 1933, §§ 11, 12(a)(2), 15 U.S.C.A. §§ 77k, 77l(a)(2).—*Steinberg v. PRT Group, Inc.*, 88 F.Supp.2d 294.—Sec Reg 25.21(3), 25.62(4).

S.D.N.Y. 1999. In order for omission to be “material,” under § 10(b) and Rule 10b-5, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Kalnit v. Eichler*, 85 F.Supp.2d 232.—Sec Reg 60.28(11).

S.D.N.Y. 1999. Prior art is “material,” for purpose of determining whether failure to disclose was inequitable conduct, rendering patent unenforceable, where there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as patent.—*Johnson Elec. North America Inc. v. Mabuchi Motor America Corp.*, 77 F.Supp.2d 446.—Pat 97.

S.D.N.Y. 1999. To demonstrate reliance or transaction causation in a securities fraud case alleging omission or nondisclosure, actual reliance need not be shown; however, the plaintiff must establish that the facts at issue were “material” in that a reasonable investor might have considered them important in marking his investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Dietrich v. Bauer*, 76 F.Supp.2d 312.—Sec Reg 60.48(2).

S.D.N.Y. 1999. Allegedly exculpatory evidence is “material,” and thus must be disclosed under *Brady*, if there is reasonable probability that, had evidence been disclosed, outcome of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome.—*White v. Keane*, 51 F.Supp.2d 495.—Crim Law 700(2.1).

S.D.N.Y. 1999. Omission or misleading statement of fact in proxy statement soliciting shareholder approval of merger plan is said to be “material,” as would violate Securities Exchange Act, if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), as amended, 15 U.S.C.A. § 78n(a).—*Lichtenberg v. Besicorp Group Inc.*, 43 F.Supp.2d 376, reconsider-

ation denied, appeal dismissed 204 F.3d 397.—Sec Reg 49.26(3).

S.D.N.Y. 1998. To establish the fraud element of cheating or defrauding, or attempting to do so, in connection with sale of commodity futures contract, in violation of the Commodity Exchange Act (CEA), it must be established that defendants made a material misrepresentation with scienter, and a statement is “material” for this purpose if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. Commodity Exchange Act, § 4b(a)(i), as amended, 7 U.S.C.A. § 6b(a)(i).—Commodity Futures Trading Com’n v. AVCO Financial Corp., 28 F.Supp.2d 104, opinion modified 1998 WL 524901, affirmed in part, reversed in part and remanded 228 F.3d 94.—Com Fut 17.

S.D.N.Y. 1998. Under *Brady*, favorable evidence is “material,” and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—Lamberti v. U.S., 22 F.Supp.2d 60, affirmed Badalamenti v. U.S., 201 F.3d 430.—Crim Law 700(2.1).

S.D.N.Y. 1998. Neither witness’ opinion regarding existence of plot to kill defendant, nor allegedly suppressed tapes on which opinion purportedly was partially based, was “material” evidence for purposes of *Brady* claim based on government’s allegedly improper suppression of opinion and tapes, despite claim that plot provided non-drug-related reason for intercepted conversations, given witness’ testimony that others were looking for defendant to kill him and that defendant was aware of this.—Lamberti v. U.S., 22 F.Supp.2d 60, affirmed Badalamenti v. U.S., 201 F.3d 430.—Crim Law 700(3).

S.D.N.Y. 1998. For information to be “material,” for purposes of fraud claim under Securities Exchange Act § 10(b) and Rule 10b–5, there must be a substantial likelihood that a reasonable investor would view it as significantly altering the “total mix” of information available; this inquiry is guided both by the probability that an event will occur and the anticipated magnitude of the event relative to the totality of the company’s activity. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—S.E.C. v. Falbo, 14 F.Supp.2d 508.—Sec Reg 60.28(11), 60.46.

S.D.N.Y. 1998. Where information regarding a merger originates from an insider, the information, even if not detailed, takes on an added charge just because it is inside information, in determining whether information is “material,” for purposes of fraud claim under Securities Exchange Act § 10(b) and Rule 10b–5. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—S.E.C. v. Falbo, 14 F.Supp.2d 508.—Sec Reg 60.28(11).

S.D.N.Y. 1998. Information about corporation’s planned tender offer for another company was “material” information, for purposes of fraud claim under Securities Exchange Act § 10(b) and Rule 10b–5. Securities Exchange Act of 1934, § 10(b),

15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—S.E.C. v. Falbo, 14 F.Supp.2d 508.—Sec Reg 60.28(11).

S.D.N.Y. 1998. Information given to trader that corporation planned tender offer for another company, which information was obtained by eavesdropping in corporation’s executive offices, and that she had to act quickly was “material” information, for purposes of claim under Securities Exchange Act § 10(b) and Rule 10b–5. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—S.E.C. v. Falbo, 14 F.Supp.2d 508.—Sec Reg 60.28(11).

S.D.N.Y. 1997. Under New Jersey law, insured’s misrepresentation to insurer is “material,” and will render policy void, if it naturally and reasonably influenced judgment of underwriter in making insurance contract at all, or in estimating degree or character of risk, or in fixing premium; in other words, misrepresentation is material if it is reasonably related to estimation of risk or assessment of premium.—In re Payroll Exp. Corp., 216 B.R. 344, reconsideration denied, affirmed 186 F.3d 196, certiorari denied Pereira v. Aetna Casualty & Surety Co., 120 S.Ct. 1419, 529 U.S. 1019, 146 L.Ed.2d 312.—Insurance 2958.

S.D.N.Y. 1997. Prior losses in excess of \$2.3 million that insured failed to disclose on its application for employee dishonesty and crime policy were “material” as matter of law, and provided basis for rescission claim under New Jersey law, as allegedly bearing on adequacy of insured’s security systems, management and internal controls, particularly where each undisclosed loss was in excess of the \$25,000 deductible.—In re Payroll Exp. Corp., 216 B.R. 344, reconsideration denied, affirmed 186 F.3d 196, certiorari denied Pereira v. Aetna Casualty & Surety Co., 120 S.Ct. 1419, 529 U.S. 1019, 146 L.Ed.2d 312.—Insurance 3021.

S.D.N.Y. 1997. Defendant accounting firm’s false representations of corporation’s pre-tax net income and earnings in audited annual reports and no-default letters for four year period were “material,” for purposes of securities fraud action by investors who lost \$100 million on privately-placed debt securities when corporation was placed in involuntary bankruptcy; after extensive review by both defendant and another accounting firm, corporation’s financials for last of those four years were restated to reduce pre-tax net income from \$93 million to \$83 million, and, while restatement of earnings was not carried back to other three years, overstatement of assets and earnings in those years was of such magnitude that reasonable investor would consider it significant in making investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—AUSA Life Ins. Co. v. Ernst & Young, 991 F.Supp. 234, reversed in part, vacated in part 206 F.3d 202, on remand 119 F.Supp.2d 386, on remand 119 F.Supp.2d 394, affirmed 39 Fed.Appx. 667.—Sec Reg 60.46.

S.D.N.Y. 1997. Misrepresentation of fact is “material,” under Securities Act provisions prohibiting “material” misrepresentations or omissions in

registration statement or prospectus, when investor would attach importance to it in making investment decision. Securities Act of 1933, §§ 11, 12(a)(2), 15 U.S.C.A. §§ 77k, 77l(a)(2).—*Schoenhaut v. American Sensors, Inc.*, 986 F.Supp. 785.—Sec Reg 25.21(3), 25.62(4).

S.D.N.Y. 1997. Omission of fact is “material,” under Securities Act provisions prohibiting “material” misrepresentations or omissions in registration statement or prospectus, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Act of 1933, §§ 11, 12(a)(2), 15 U.S.C.A. §§ 77k, 77l(a)(2).—*Schoenhaut v. American Sensors, Inc.*, 986 F.Supp. 785.—Sec Reg 25.21(3), 25.62(4).

S.D.N.Y. 1997. Omissions or mischaracterizations in warrant affidavit are “material” if they cause warrant to encompass additional premises as to which there is no probable cause, thus making warrant overbroad. U.S.C.A. Const.Amend. 4.—*Lewis v. City of Mount Vernon, Mount Vernon Police Dept.*, 984 F.Supp. 748.—Searches 112.

S.D.N.Y. 1997. Information is “material” for purposes of action under Rule 10b-5 if there is substantial likelihood that reasonable investor would have considered it important in making investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Addeo v. Braver*, 956 F.Supp. 443.—Sec Reg 60.46.

S.D.N.Y. 1996. Fundamental question in determining whether undisclosed information is “material,” for purposes of federal securities laws, is whether there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information available.—*L.L. Capital Partners, L.P. v. Rockefeller Center Properties, Inc.*, 939 F.Supp. 294.—Sec Reg 60.28(11).

S.D.N.Y. 1996. Misrepresentation or omission is “material,” for federal securities fraud purposes, if reasonably prudent investor would consider it important in making decision. Securities Act of 1933, §§ 11, 12(2), 15 U.S.C.(1994 Ed.) §§ 77k, 77l(2); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Geiger v. Solomon-Page Group, Ltd.*, 933 F.Supp. 1180.—Sec Reg 25.21(3), 25.62(4), 60.28(11), 60.46.

S.D.N.Y. 1996. An omission in the prospectus is “material,” for purposes of liability under Securities Act § 11 and 12(2), if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered “total mix” of information made available. Securities Act of 1933, §§ 11(a), 12(a)(2), as amended, 15 U.S.C.A. §§ 77k(a), 77l(a)(2).—*Phillips v. Kidder, Peabody & Co.*, 933 F.Supp. 303, affirmed 108 F.3d 1370.—Sec Reg 25.62(4).

S.D.N.Y. 1996. Information is “material,” for purposes of Securities Exchange Act § 10(b) and Rule 10b-5, if there is substantial likelihood that

reasonable investor will consider information important in deciding how to invest. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*S.E.C. v. Moran*, 922 F.Supp. 867, 133 A.L.R. Fed. 737.—Sec Reg 60.46.

S.D.N.Y. 1995. In order for statements contained in registration statement or prospectus to be “material” under the Securities Act, there must be substantial likelihood that disclosure of omitted or misrepresented facts would have been viewed by reasonable investor as having significantly altered “total mix” of information made available. Securities Act of 1933, §§ 11, 12(2), 15 U.S.C.A. §§ 77k, 77l(2).—*Krouner v. American Heritage Fund, Inc.*, 899 F.Supp. 142.—Sec Reg 25.21(3), 25.62(4).

S.D.N.Y. 1995. Omitted fact (or misleading statement) is “material,” for securities fraud purposes, if there is substantial likelihood that reasonable investor would consider it important in deciding whether to buy or sell shares. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Robbins v. Moore Medical Corp.*, 894 F.Supp. 661.—Sec Reg 60.28(11), 60.46.

S.D.N.Y. 1995. For omitted fact to be “material,” for securities fraud purposes, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered “total mix” of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Robbins v. Moore Medical Corp.*, 894 F.Supp. 661.—Sec Reg 60.28(11).

S.D.N.Y. 1995. In determining materiality, for purposes of suit claiming material omission from proxy statements, omitted fact is “material” if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a); 17 C.F.R. § 240.14a-6.—*Krauth v. Executive Telecard, Ltd.*, 890 F.Supp. 269.—Sec Reg 49.22(2).

S.D.N.Y. 1994. References, including previously obtained patent and two published articles, which were withheld by patent applicants were “material” references and should have been disclosed to Patent and Trademark Office (PTO), because PTO’s failure to consider references could have reasonably affected decision to issue patent.—*Ortho Diagnostic Systems Inc. v. Miles Inc.*, 865 F.Supp. 1073, dismissed 48 F.3d 1237.—Pat 97.

S.D.N.Y. 1994. If party moving for summary judgment is still entitled to judgment as matter of law after all facts alleged by nonmoving party are resolved in his favor as true, then any remaining disputes are neither “genuine” nor “material” and will not prevent court from granting motion. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Snyder v. Elliot W. Dann Co., Inc.*, 854 F.Supp. 264.—Fed Civ Proc 2470.1.

S.D.N.Y. 1993. Evidence should be considered “material” for purposes of determining whether government is required to disclose such evidence, if

it creates reasonable doubt that would not otherwise exist as to defendant's guilt.—U.S. v. Zhang, 833 F.Supp. 1010.—Crim Law 700(2.1).

S.D.N.Y. 1993. *Brady* does not require government to disclose information about existence of exculpatory evidence where defense has, or should have, access to that information, nor is government required to turn over evidence when defense has, or should have, access to equally probative evidence, because under such circumstances, evidence withheld cannot be said to be "material."—U.S. v. Zhang, 833 F.Supp. 1010.—Crim Law 700(3).

S.D.N.Y. 1993. For purposes of determining whether defendant is entitled to withdraw guilty plea due to prosecution's failure to disclose material impeachment information, impeachment evidence is "material" if there is reasonably probability that, but for failure to produce such information, defendant would not have entered plea, but instead would have insisted on going to trial; in assessing likelihood that defendant would not have entered plea, court must objectively examine persuasiveness of withheld information.—U.S. v. Millan-Colon, 829 F.Supp. 620, affirmed 17 F.3d 14.—Crim Law 274(3.1).

S.D.N.Y. 1993. If party moving for summary judgment is entitled to judgment as a matter of law after all facts alleged by nonmoving party are resolved in his favor as true, then any remaining factual disputes are neither "genuine" nor "material" and will not prevent court from granting motion. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Accent Designs, Inc. v. Jan Jewelry Designs, Inc.*, 827 F.Supp. 957, motion denied 1994 WL 23274, reargument denied 1994 WL 121673.—Fed Civ Proc 2470.1.

S.D.N.Y. 1993. Substantive law identifies those factual disputes that are "material," for summary judgment purposes.—*John Hancock Property and Cas. Ins. Co. v. Universale Reinsurance Co., Ltd.*, 147 F.R.D. 40.—Fed Civ Proc 2470.1.

S.D.N.Y. 1992. Evidence that would be offered solely to further impeach witness whose character was shown at trial to be questionable is merely cumulative and is not "material," so as to support award of new trial for government's inadvertent nondisclosure of such evidence. Fed.Rules Cr. Proc.Rule 33, 18 U.S.C.A.—U.S. v. Taveras, 808 F.Supp. 303.—Crim Law 945(2).

S.D.N.Y. 1992. Misrepresentation in application is "material" if knowledge by insurer of facts misrepresented would have led to refusal by insurer to make such contract. N.Y.McKinney's Insurance Law § 3105(b).—*Berger v. Manhattan Life Ins. Co.*, 805 F.Supp. 1097.—Insurance 2958.

S.D.N.Y. 1992. Directors' reasons for executing retirement agreement in favor of chief executive officer were not "material" facts that had to be included in proxy statement for director election, so long as all objective material facts relating to transaction had been disclosed in order to allow shareholders to decide whether to vote for or against directors. Securities Exchange Act of 1934,

§ 14(a), 15 U.S.C.A. § 78n(a).—*Freer v. Mayer*, 796 F.Supp. 89.—Sec Reg 49.22(3).

S.D.N.Y. 1992. Misrepresentation or misleading omission by corporation is "material" under § 10(b) if reasonable investor would consider it significant in total mix of information influencing his or her decision to purchase or sell security. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Robbins v. Moore Medical Corp.*, 788 F.Supp. 179.—Sec Reg 60.28(11).

S.D.N.Y. 1992. Information is "material" under Rule 10b-5 where there is substantial likelihood that reasonable investor would find it significant in evaluating whether to buy or sell securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—S.E.C. v. Singer, 786 F.Supp. 1158.—Sec Reg 60.28(11).

S.D.N.Y. 1991. Evidence is "material" for purposes of requiring disclosure by Government if pretrial disclosure will enable defendant to alter significantly quantum of proof in his favor. Fed. Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. McGuinness, 764 F.Supp. 888.—Crim Law 627.6(1).

S.D.N.Y. 1989. Information regarding possible takeover of company at time when company was regarded as potential target was "material" information within meaning of securities laws. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—U.S. v. Victor Teicher & Co., L.P., 726 F.Supp. 1424.—Sec Reg 60.28(15).

S.D.N.Y. 1987. Failure of insured AIDS victim to disclose two, prior visits to physicians in weeks before issuance of key-man life policy was "misrepresentation" under New York law, was "material," and was deemed to be misrepresentation that insured did not have anemia or enlarged lymph glands discovered during consultations, even if medical examiner for insurer failed to ask names of physicians visited within past five years and dates of visits; insurer would have rejected application had it known of anemia or enlarged lymph glands. N.Y.McKinney's Insurance Law §§ 3105, 3105(b, d).—*Zachary Trading Inc. v. Northwestern Mut. Life Ins. Co.*, 668 F.Supp. 343.—Insurance 3003(11).

S.D.N.Y. 1987. Information regarding investment advisor's profits was not "material" information, such as directors of money market fund would have to disclose in proxy statement which they sent regarding proposed fee agreement with advisor, where omitted profitability data was not necessarily accurate. Investment Company Act of 1940, § 20(a), as amended, 15 U.S.C.A. § 80a-20(a).—*Schuyt v. Rowe Price Prime Reserve Fund, Inc.*, 663 F.Supp. 962, affirmed 835 F.2d 45, certiorari denied 108 S.Ct. 1594, 485 U.S. 1034, 99 L.Ed.2d 908.—Sec Reg 215.

S.D.N.Y. 1986. Information is "material" within meaning of securities fraud provisions if there is a "substantial likelihood" that the information would be significant to a "reasonable investor" in making his or her investment decisions. Securities Ex-

change Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—*S.E.C. v. Tome*, 638 F.Supp. 596.—Sec Reg 60.28(11).

S.D.N.Y. 1985. For purposes of Rule 14a-9, which imposes liability for omission of material fact in proxy statement, omitted fact is "material" when there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote, thus requiring showing of substantial likelihood that, under all circumstances, omitted fact would have assumed actual significance in deliberations of reasonable shareholder, or that disclosure of omitted fact would have been viewed by reasonable investors as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—*Mendell v. Greenberg*, 612 F.Supp. 1543, affirmed in part 927 F.2d 667, opinion amended 938 F.2d 1528.—Sec Reg 49.22(2).

S.D.N.Y. 1979. Omission in registration statement is not actionable unless it is material fact omitted and unless material fact that is omitted adversely affects reliability of other statements; fact is "material" if there is substantial likelihood that, under all circumstances, reasonable investor would consider it important in reaching investment decision. Securities Act of 1933, §§ 6(a), 11, 12(2), 17, 15 U.S.C.A. §§ 77f(a), 77k, 77l (2), 77q; Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Greenapple v. Detroit Edison Co.*, 468 F.Supp. 702, affirmed 618 F.2d 198.—Sec Reg 25.21(3).

S.D.N.Y. 1970. Question is "material" no matter what answer may be, unless it appears by its terms that answer cannot be material. 18 U.S.C.A. § 1621.—*U.S. v. Sweig*, 316 F.Supp. 1148.—Perj 11(2).

S.D.N.Y. 1949. Facts misstated in application by alien for visa must be material to justify a refusal to issue it and a fact suppressed or misstated is not "material" to the alien's entry, unless it is one which, if known, would have justified a refusal to issue a visa.—*U S ex rel Teper v. Miller*, 87 F.Supp. 285.—*Aliens* 46.

W.D.N.Y. 2002. Discovery is "material" if the information sought is relevant to the case and will lead to the discovery of admissible evidence. Fed. Rules Cr.Proc.Rule 16(a), 18 U.S.C.A.—*U.S. v. Holihan*, 236 F.Supp.2d 255.—Crim Law 627.6(1).

W.D.N.Y. 2001. Discovery is "material" within meaning criminal discovery rule if the information sought is relevant to the case and will lead to the discovery of admissible evidence. Fed.Rules Cr. Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—*U.S. v. Chimeria*, 201 F.R.D. 72.—Crim Law 627.6(1).

W.D.N.Y. 2000. In the context of alleged violation of government's *Brady* obligation to disclose material, favorable evidence, evidence is "material" when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Lyon v. Senkowski*, 109 F.Supp.2d 125.—Crim Law 700(2.1).

W.D.N.Y. 2000. Evidence is not "material" under *Brady*, which requires government's disclosure of material, favorable evidence, if evidence merely furnishes an additional basis on which to impeach a witness whose credibility has already been shown to be questionable.—*Lyon v. Senkowski*, 109 F.Supp.2d 125.—Crim Law 700(4).

W.D.N.Y. 2000. Government did not violate *Brady* when it failed to disclose notes from initial interview with accomplice, which officer allegedly destroyed, given that defendant did not allege that such notes, if they existed, included any new exculpatory evidence, inasmuch as evidence impeaching officer, whose testimony did not directly link defendant to crime or provide essential element of offense, would not be "material."—*Lyon v. Senkowski*, 109 F.Supp.2d 125.—Crim Law 700(4).

W.D.N.Y. 2000. In the context of *Brady* claim concerning government's obligation to disclose material, favorable evidence, impeachment evidence is "material" if the witness in question supplied the only evidence linking the defendant to the crime or the only evidence of an essential element of the offense.—*Lyon v. Senkowski*, 109 F.Supp.2d 125.—Crim Law 700(4).

W.D.N.Y. 2000. Statement in which individual recounted witness' description of events surrounding murder in manner inconsistent with witness' trial testimony was not "material" for purposes of defendant's *Brady* claim based on prosecution's failure to disclose statement, even though statement could have been used to impeach witness; although, unlike statement, witness' testimony did not suggest that third person was present during events described, both statements identified defendant as killer, and statement also noted individual's reluctance to tell what witness had said because defendant had previously pointed gun at him and threatened to kill him if he betrayed defendant.—*Berger v. Stinson*, 97 F.Supp.2d 359.—Crim Law 700(4).

W.D.N.Y. 1999. Evidence is "material," for purposes of prosecution's constitutional duty to disclose material evidence favorable to the defense, if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different; a "reasonable probability" of a different result is shown when the evidence suppressed undermines confidence in the outcome of the trial. U.S.C.A. Const. Amend. 14.—*Stephens v. Costello*, 55 F.Supp.2d 163.—Crim Law 700(2.1).

W.D.N.Y. 1997. "Sentence six remand" of Supplemental Security Income (SSI) or disability insurance benefits case to Commissioner of Social Security for additional evidence to be taken is only appropriate when claimant has demonstrated three things: (1) that proffered evidence is new and not merely cumulative of what is already in record; (2) that new evidence is "material," meaning that it is both relevant to claimant's condition during time period for which benefits were denied and probative, and that there is reasonable possibility that new evidence would have influenced Commissioner to decide claimant's application differently; and (3)

good cause for claimant's failure to present evidence earlier. Social Security Act, § 202(g), 42 U.S.C.A. § 405(g).—*Schaffer v. Apfel*, 992 F.Supp. 233.—Social S 149.

W.D.N.Y. 1997. To justify remand of Social Security disability claim to administrative adjudicator for review of new and material evidence, claimant must show that (1) evidence is new and not merely cumulative of what is already in record; (2) evidence is "material," i.e., both relevant to claimant's condition during time period for which benefits were denied and probative; and (3) there is good cause for failing to present evidence earlier. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).—*Geracitano v. Callahan*, 979 F.Supp. 952.—Social S 149.

W.D.N.Y. 1995. Under New York law, statement is "material" for perjury purposes if it reflects on matter under consideration; statement need not directly prove fact in issue. N.Y.McKinney's Penal Law § 210.15.—*Dale v. Kelley*, 908 F.Supp. 125, affirmed 95 F.3d 2.—*Perj* 11(2), 11(8).

W.D.N.Y. 1995. Fact is "material," for purpose of summary judgment motion, if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Hydraflow v. Enidine Inc.*, 907 F.Supp. 639.—Fed Civ Proc 2470.1.

W.D.N.Y. 1995. Fact is "material," for summary judgment purposes, if it might affect the outcome of the suit under governing law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Kaczmarek v. Bethlehem Steel Corp.*, 884 F.Supp. 768.—Fed Civ Proc 2470.1.

W.D.N.Y. 1994. Obliteration of batch codes from bottles containing manufacturer's hair care products, which sometimes included obliteration of other information printed on bottles, including trademark, was "material" difference in product allowing for trademark infringement action under Lanham Act. Lanham Trade-Mark Act, § 32(1), 15 U.S.C.A. § 1114(1).—*John Paul Mitchell Systems v. Pete-N-Larry's Inc.*, 862 F.Supp. 1020.—Trade Reg 332.

W.D.N.Y. 1993. Factual dispute is "material" for summary judgment purposes only if it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Mc Duffie v. Watkins Glen Intern., Inc.*, 833 F.Supp. 197.—Fed Civ Proc 2470.1.

W.D.N.Y. 1979. A statement is "material" for purposes of the section which provides penalties for making false statements concerning matters within the jurisdiction of any department or agency of the United States if the statement is capable of influencing or affecting a governmental function. 18 U.S.C.A. § 1001.—*U.S. v. Olin Corp.*, 465 F.Supp. 1120.—*Fraud* 68.10(3).

E.D.N.C. 1997. Statement or omission is "material," for purposes of securities fraud action, if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding whether to buy or sell shares. 17 C.F.R.

§ 240.10b-5.—*In re FAC Realty Securities Litigation*, 990 F.Supp. 416.—Sec Reg 60.28(11), 60.46.

M.D.N.C. 1998. A misrepresented or omitted fact is "material" for purposes of Rule 10b-5 if a substantial likelihood exists that a reasonable investor would have viewed the true facts or the omitted fact as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Krim v. Coastal Physician Group, Inc.*, 81 F.Supp.2d 621, affirmed 201 F.3d 436.—Sec Reg 60.28(11), 60.46.

M.D.N.C. 1993. Misstatement made in connection with sale or offer for sale of security is "material" if reasonable investor would consider matter important in deciding whether to acquire security, given total mix of information available. Securities Act of 1933, § 12(2), as amended, 15 U.S.C.A. § 77l(2); Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—*Andrews v. Fitzgerald*, 823 F.Supp. 356.—Sec Reg 60.27(1).

M.D.N.C. 1977. Fact is "material" under the federal securities laws if there is a substantial likelihood that a reasonable investor would consider it important in reaching an investment decision. Securities Act of 1933, §§ 11, 12, 17, 15 U.S.C.A. §§ 77k, 77l, 77q; Securities Exchange Act of 1934, §§ 10, 15, 15 U.S.C.A. §§ 78j, 78o.—*Parsons v. Hornblower & Weeks-Hemphill, Noyes*, 447 F.Supp. 482, affirmed 571 F.2d 203.—Sec Reg 27.42, 60.46.

W.D.N.C. 1993. Facts which party moving for summary judgment bears burden of proving are facts which are "material" for summary judgment purposes. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Donmar Enterprises, Inc. v. Southern Nat. Bank of North Carolina*, 828 F.Supp. 1230, affirmed 64 F.3d 944.—Fed Civ Proc 2544.

W.D.N.C. 1993. To be "material," genuine fact issue must relate to facts which, if proved, would, as a matter of law, enable the party opposing summary judgment to prevail on the merits of the case. Fed.Rules Civ.Proc.Rule 56(e), 28 U.S.C.A.—*U.S. v. Real Property in Mecklenburg County, N.C., Known as Leola's Plaza, Located at 1501 West Boulevard*, 814 F.Supp. 468, vacated *U.S. v. Marsh*, 9 F.3d 1545, appeal after remand 105 F.3d 927.—Fed Civ Proc 2470.1.

W.D.N.C. 1985. For purposes of determining whether information allegedly withheld from Patent and Trademark Office was material, when affidavits are submitted with purpose of overcoming objections and prior art rejections entered by examiner, and rejections are thereafter withdrawn in response to affidavits, affidavits and misrepresentations made therein affecting examiner's decision are "material." Practice Rules in Patent Cases, Rule 56(a, d), 35 U.S.C.A.App.—*Donaldson Co., Inc. v. Pneumafil Corp.*, 617 F.Supp. 1428, affirmed in part, vacated in part 824 F.2d 979.—Pat 97.

N.D. Ohio 2002. Information is "material" and must be disclosed by patent applicant if there is

substantial likelihood that reasonable examiner would consider information important when deciding whether to allow patent application to issue.—Emerson Elec. Co. v. Spartan Tool, LLC, 223 F.Supp.2d 856.—Pat 97.

N.D. Ohio 2000. Information is “material,” for purpose of determining whether failure to disclose it in patent application is inequitable conduct, when there is substantial likelihood that reasonable examiner would have considered information important in deciding whether to allow application to issue as patent.—Boler Co. v. Neway Anchorlock, 92 F.Supp.2d 680.—Pat 97.

N.D. Ohio 2000. Fact issue is “material,” for purposes of summary judgment, only if its resolution will affect outcome of lawsuit. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.—North Olmsted Chamber of Commerce v. City of North Olmsted, 86 F.Supp.2d 755, clarification denied 108 F.Supp.2d 792.—Fed Civ Proc 2470.1.

N.D. Ohio 1999. Exculpatory evidence is “material,” for purposes of *Brady* rule requiring prosecution to disclose it to defense, if in its absence defendant did not receive fair trial, understood as trial resulting in verdict worthy of confidence.—U.S. v. Yang, 74 F.Supp.2d 724.—Crim Law 700(2.1).

N.D. Ohio 1999. Evidence withheld by government is “material” if there is reasonable probability that, had evidence been disclosed to defense, result of proceedings would have been different.—Dennis v. Mitchell, 68 F.Supp.2d 863.—Crim Law 700(2.1).

N.D. Ohio 1999. A fact is “material,” for purposes of summary judgment, only if its resolution will affect the outcome of the lawsuit; determination of whether a fact is “genuine” requires consideration of the applicable evidentiary standard. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.—Mataska v. Hinckley Tp., 56 F.Supp.2d 906.—Fed Civ Proc 2470.1.

N.D. Ohio 1998. Under Ohio law, alteration of contract by additional terms is “material” for purposes of statute making them part of contract between merchants unless they “materially alter” the contract, where alteration would result in surprise or hardship if incorporated without the express awareness of the nonassenting party. Ohio R.C. § 1302.10.—Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc., 7 F.Supp.2d 954.—Sales 22(4), 23(4).

N.D. Ohio 1996. For purpose of determining whether summary judgment is appropriate, fact is “material” only if its resolution will affect outcome of lawsuit. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.—Orchard Group, Inc. v. Konica Medical Corp., 918 F.Supp. 186.—Fed Civ Proc 2470.1.

N.D. Ohio 1996. Under Ohio law, party is entitled to rescission of contract where there is mutual mistake as to material part of contract and where complaining party is not negligent in failing to discover the mistake; mistake is “material” when it goes to basic assumption on which contract was made that has material effect on agreed exchange

of performances.—R.J. Wildner Contracting Co., Inc. v. Ohio Turnpike Com’n, 913 F.Supp. 1031.—Contracts 93(5).

N.D. Ohio 1995. Fact is “material” for summary judgment purposes only if its resolution will affect outcome of the suit. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.—Brothers v. NCR Corp., 885 F.Supp. 1043.—Fed Civ Proc 2470.1.

N.D. Ohio 1995. Fact is “material” for summary judgment purposes only if its resolution will affect outcome of lawsuit. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.—Northeast Ohio Coalition for the Homeless v. City of Cleveland, 885 F.Supp. 1029, reversed 105 F.3d 1107, 1997 Fed. App. 43P, rehearing and suggestion for rehearing denied, certiorari denied 118 S.Ct. 335, 522 U.S. 931, 139 L.Ed.2d 260.—Fed Civ Proc 2470.1.

N.D. Ohio 1995. Fact is “material” for summary judgment purposes only if its resolution will affect outcome of lawsuit. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.—Martin v. Daily Express, Inc., 878 F.Supp. 91.—Fed Civ Proc 2470.1.

N.D. Ohio 1995. For purposes of summary judgment, fact is “material” only if its resolution will affect outcome of lawsuit. Fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A.—Daniels v. National Employee Ben. Services, Inc., 877 F.Supp. 1067.—Fed Civ Proc 2470.1.

N.D. Ohio 1994. Statements by corporate officer speaking of past factual operational results which were not alleged to be incorrect were not “material,” for purposes of stating securities fraud claim, even coupled with generic expression of optimism about corporation’s future performance; to argue that statements were misleading because true statements of past performance painted falsely optimistic picture about the future reached too far, as no reasonable investors would have relied on these general “puffing” statements. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—Cione v. Gorr, 843 F.Supp. 1199.—Sec Reg 60.27(5).

N.D. Ohio 1993. Fact is “material” for purposes of summary judgment only if its resolution will affect outcome of lawsuit. Fed. Rules Civ. Proc. Rule 56(e), 28 U.S.C.A.—United Steelworkers of America, AFL-CIO, CLC v. United Engineering, Inc., 839 F.Supp. 1279, affirmed 52 F.3d 1386, 1995 Fed. App. 135P.—Fed Civ Proc 2470.1.

N.D. Ohio 1992. Fact is “material” for purposes of summary judgment motion only if its resolution will affect outcome of lawsuit. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.—Natural Resources Defense Council, Inc. v. Vygen Corp., 803 F.Supp. 97.—Fed Civ Proc 2470.1.

N.D. Ohio 1983. For information to be “material,” and thus required to be disclosed in a tender offer, there must be a substantial likelihood that a reasonable shareholder would consider it important in making an investment decision or would view it as altering significantly the total mix of information before him. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—Re-

source *Exploration v. Yankee Oil & Gas, Inc.*, 566 F.Supp. 54.—Sec Reg 52.39(3).

N.D.Ohio 1940. The statutory grant of jurisdiction to federal court to issue an order requiring obedience to National Labor Relations Board's subpoena to produce evidence "touching" matter under investigation is not an implicit grant of jurisdiction to determine "relevancy" of evidence sought by the Board, since "relating to" or "touching" are not words which are synonymous with "relevant" and "material," nor do they have the legal significance of such latter words.—National Labor Relations Board v. Goodyear Tire & Rubber Co., 36 F.Supp. 413, affirmed in part, remanded in part *Goodyear Tire & Rubber Co. v. N.L.R.B.*, 122 F.2d 450, 136 A.L.R. 883.

S.D.Ohio 2000. Evidence is "material," for purpose of establishing *Brady* violation, if there is reasonable possibility that, had evidence been disclosed to defense, result of proceedings would have been different.—*Smith v. Anderson*, 104 F.Supp.2d 773.—Crim Law 700(2.1).

S.D.Ohio 2000. For purposes of prosecutor's duty under *Brady* to disclose favorable, material evidence, favorable evidence is "material" when there is a reasonable probability that the result of the proceeding would have been different if the prosecutor had disclosed the evidence to the defense.—*Jamison v. Collins*, 100 F.Supp.2d 647, affirmed 291 F.3d 380, 2002 Fed.App. 184P, amended on denial of rehearing.—Crim Law 700(2.1).

S.D.Ohio 1998. For purposes of *Brady* claim based on prosecutor's alleged failure to disclose evidence, favorable evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Jamison v. Collins*, 100 F.Supp.2d 521.—Crim Law 700(2.1).

S.D.Ohio 1992. Misrepresentation is "material" within meaning of Lanham Act if it is likely to influence purchasing decision or if it misrepresented inherent quality or characteristic of product. Lanham Trade-Mark Act, § 43(a), (a)(2), as amended, 15 U.S.C.A. § 1125(a), (a)(2).—*Cincinnati Sub-Zero Products, Inc. v. Augustine Medical, Inc.*, 800 F.Supp. 1549.—Trade Reg 422.

S.D.Ohio 1985. In case where claim of fraud involves withholding of relevant prior art from patent examiner, nondisclosed prior art is "material" if application would have been rejected, but for non-disclosure.—*Torin Corp. v. Philips Industries, Inc.*, 625 F.Supp. 1077.—Pat 97.

W.D.Okla. 1994. For purposes of summary judgment motion, "material" fact is one which might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Saner v. Healthcare Computer Corp.*, 879 F.Supp. 1116.—Fed Civ Proc 2470.1.

W.D.Okla. 1994. For purposes of *Brady* rule requiring prosecutor to disclose to accused all material, exculpatory evidence in possession of prosecution, evidence is "material" only if there is a reasonable probability that, had the evidence been

disclosed to defense, result of proceeding would have been different, and "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*Stafford v. Maynard*, 848 F.Supp. 946, appeal dismissed 60 F.3d 837.—Crim Law 700(2.1).

D.Or. 1998. A constitutional error occurs, and the conviction must be reversed on basis of failure of prosecution to deliver *Brady* material, only if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial; the evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*Whaley v. Thompson*, 22 F.Supp.2d 1146.—Crim Law 700(2.1), 1166(10.10).

D.Or. 1998. Evidence withheld by prosecution is "material," as would require reversal of conviction, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*U.S. v. Hill*, 19 F.Supp.2d 1185.—Crim Law 700(2.1).

D.Or. 1998. Evidence that state gang strike force, whose use of paid informant resulted in defendant's conviction for distributing crack cocaine base, was disbanded after investigation of police misconduct and mishandling of evidence was not "material," such that it would have changed result of proceeding, even if such evidence had been disclosed to defendant before trial, considering that admitted testimony referenced informant's bias and motivation since he had been paid \$200 per transaction, that informant admitted to drug use and illegal activities, that, after defendant raised entrapment defense in which he challenged informant's credibility, court instructed jury to examine informant's testimony with greater caution than that of ordinary witness, that evidence showed strike force focused on mid-level to upper-level dealers who could provide at least one ounce of crack cocaine in single transaction, rather than African-American dealers, and that there was no evidence indicating strike force mishandled evidence or engaged in misconduct in defendant's case.—*U.S. v. Hill*, 19 F.Supp.2d 1185.—Crim Law 700(3), 700(4).

D.Or. 1996. Omitted fact is "material" in securities fraud action if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Freedman v. Louisiana-Pacific Corp.*, 922 F.Supp. 377.—Sec Reg 60.28(11).

D.Or. 1990. An issue is "material," for purposes of summary judgment rule, if it is relevant to law governing claim or defense. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Gifford Pinchot Alliance v. Buttrille*, 752 F.Supp. 967.—Fed Civ Proc 2470.1.

E.D.Pa. 2002. For purposes of securities fraud claim, a fact is "material" if there is a substantial

likelihood that a reasonable investor would consider it important in making his or her investment decision. Social Security Act, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re ATI Technologies, Inc. Securities Litigation, 216 F.Supp.2d 418.—Sec Reg 60.28(11), 60.46.

E.D.Pa. 2001. The evidence is “material,” so that its suppression would violate due process rights, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—Godschalk v. Montgomery County Dist. Attorney’s Office, 177 F.Supp.2d 366.—Const Law 268(5).

E.D.Pa. 2001. Omitted fact is “material,” for purposes of securities fraud claims under § 10(b) and Rule 10b-5, if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to act; there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re Provident Financial Corp. Securities Litigation, 152 F.Supp.2d 814.—Sec Reg 60.28(11).

E.D.Pa. 2001. An omitted fact is “material” for purposes of securities fraud claims if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to act. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5(b).—In re CDNOW, Inc. Securities Litigation, 138 F.Supp.2d 624.—Sec Reg 60.28(11).

E.D.Pa. 1999. ADEA requirement that employer take adverse employment action against employee mandates employee to show that adverse action was “material”; in other words, not every type of work related friction, regardless of severity, between employer and the employee will rise to level of legally sufficient adverse action. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.—Schmidt v. Montgomery Kone, Inc., 69 F.Supp.2d 706.—Civil R 168.1.

E.D.Pa. 1999. Statement or omission is “material,” for purposes of securities laws, if there is a substantial likelihood that, under all the circumstances, the statement or omission would have assumed actual significance in the deliberations of the reasonable shareholder; issue is whether there is a substantial likelihood that the disclosure would have been viewed by the reasonable investor as having significantly altered the total mix of information available to that investor. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re Aetna Inc. Securities Litigation, 34 F.Supp.2d 935.—Sec Reg 60.28(11), 60.46.

E.D.Pa. 1998. Genuine issue of material fact precludes summary judgment, but an issue of fact is “material” only if the dispute might affect the outcome of suit under the governing law.—Holt Cargo Systems, Inc. v. Delaware River Port Author-

ity, 20 F.Supp.2d 803, affirmed 165 F.3d 242.—Fed Civ Proc 2470.1.

E.D.Pa. 1998. Materiality, for purposes of securities fraud claim, depends on the significance the reasonable investor would place on the withheld or misrepresented information and requires a fact-specific inquiry; information is “material” if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Popovice v. Milides, 11 F.Supp.2d 638.—Sec Reg 60.28(11), 60.46.

E.D.Pa. 1998. Debtor’s false oath is “material,” for denial of discharge purposes, if it concerns discovery of assets, business transactions, and/or past business dealings of debtor or existence or disposition of debtor’s property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—Casey v. Kasal, 223 B.R. 879.—Bankr 3282.1.

E.D.Pa. 1998. Ten thousand dollar value that Chapter 7 debtor assigned, on his bankruptcy schedules, to artwork which he had valued at \$50,000 on financial statement prepared just one year earlier qualified as “material” false oath, for denial of discharge purposes. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—Casey v. Kasal, 223 B.R. 879.—Bankr 3283.

E.D.Pa. 1997. Facts or information are “material” for purpose of securities fraud litigation if they would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Voit v. Wonderware Corp., 977 F.Supp. 363.—Sec Reg 60.46.

E.D.Pa. 1997. Information is “material,” for purposes of establishing securities fraud action based on nondisclosure, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered “total mix” of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 70 P.S. §§ 1-401, 1-501; 17 C.F.R. § 240.10b-5.—McFeeley v. Florig, 966 F.Supp. 378.—Sec Reg 60.28(11), 278.

E.D.Pa. 1997. Information on insurance application is “material” if knowledge or ignorance of it would influence decision of issuing insurer to issue the policy, or ability of insurer to evaluate degree and character of risk, or determination of appropriate premium rate.—Jung v. Nationwide Mut. Fire Ins. Co., 949 F.Supp. 353.—Insurance 2958.

E.D.Pa. 1996. Dispute is “material,” for summary judgment purposes, if it might affect the outcome of the action under the governing law. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.—In re Joshua Hill, Inc., 199 B.R. 298, affirmed in part, reversed in part Joshua Hill, Inc. v. Whitmarsh Tp. Authority, 151 F.3d 1025.—Bankr 2164.1; Fed Civ Proc 2470.1.

E.D.Pa. 1996. Bearing in mind that all uncertainties are to be resolved in favor of nonmoving party, factual dispute is "material," and will preclude summary judgment, only if it might affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Tuman v. Genesis Associates*, 935 F.Supp. 1375.—Fed Civ Proc 2470.1.

E.D.Pa. 1996. Issue of material fact is "genuine" if evidence is such that reasonable jury could return verdict for nonmoving party, and fact is "material" if it might affect the outcome of the suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Baker v. Lehman*, 932 F.Supp. 666.—Fed Civ Proc 2470.1.

E.D.Pa. 1995. Factual dispute is only "material," so as to preclude summary judgment, if it might affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Lonesathirath v. Avis Rent A Car System, Inc.*, 937 F.Supp. 367, affirmed 91 F.3d 124.—Fed Civ Proc 2470.1.

E.D.Pa. 1995. Bearing in mind that all uncertainties are to be resolved in favor of party opposing summary judgment motion, factual dispute is "material" for purposes of summary judgment motion only if it might affect outcome of case. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Layser v. Morrison*, 935 F.Supp. 562.—Fed Civ Proc 2470.1.

E.D.Pa. 1995. For fact to be "material," for summary judgment purposes, it must be one that might affect outcome of the suit under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Travelers Indem. Co. v. Stedman*, 910 F.Supp. 203, vacated in part, modified in part 925 F.Supp. 345.—Fed Civ Proc 2470.1.

E.D.Pa. 1995. Statement or omission is considered "material," for securities fraud purposes, if there is substantial likelihood that it would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*McCarthy v. C-Cor Electronics, Inc.*, 909 F.Supp. 970, on reconsideration in part 929 F.Supp. 199.—Sec Reg 60.46.

E.D.Pa. 1995. Factual dispute is "material" for summary judgment purposes only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Eleven Vehicles*, 898 F.Supp. 1143.—Fed Civ Proc 2470.1.

E.D.Pa. 1995. Statement or omission is considered "material," for securities fraud purposes if there is substantial likelihood that reasonable investor would view it as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*In re ValueVision Intern. Inc. Securities Litigation*, 896 F.Supp. 434.—Sec Reg 60.46.

E.D.Pa. 1995. Evidence is "material" for *Brady* purposes if there is "reasonable probability" that, had evidence been disclosed to the defense, result of proceeding would have been different; "reasonable probability" is one sufficient to undermine

confidence in the outcome. U.S.C.A. Const. Amend. 5.—*U.S. v. Pelullo*, 895 F.Supp. 718, reversed 105 F.3d 117, on remand 6 F.Supp.2d 403, affirmed 173 F.3d 131, certiorari denied 120 S.Ct. 72, 528 U.S. 824, 145 L.Ed.2d 62, post-conviction relief denied 144 F.Supp.2d 369.—Crim Law 700(2.1).

E.D.Pa. 1995. Evidence was not "material," for *Brady* purposes, even though defendant's third trial, during which he possessed all such information for the first time, resulted in hung jury; defendant had all of the same material available to him at fourth trial, and jury found him guilty. U.S.C.A. Const. Amend. 5.—*U.S. v. Pelullo*, 895 F.Supp. 718, reversed 105 F.3d 117, on remand 6 F.Supp.2d 403, affirmed 173 F.3d 131, certiorari denied 120 S.Ct. 72, 528 U.S. 824, 145 L.Ed.2d 62, post-conviction relief denied 144 F.Supp.2d 369.—Crim Law 700(3).

E.D.Pa. 1995. Misrepresentation by ERISA fiduciary to pension plan participant is "material" if there is substantial likelihood that it would mislead reasonable participant in making adequately informed decision about if and when to retire. Employee Retirement Income Security Act of 1974, § 404(a), as amended, 29 U.S.C.A. § 1104(a).—*Zschunke v. Bell Atlantic Corp.*, 872 F.Supp. 1395, affirmed 70 F.3d 1259.—Pensions 47.

E.D.Pa. 1995. For summary judgment purposes, bearing in mind that all uncertainties are to be resolved in favor of nonmoving party, factual dispute is only "material" if it might affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Woolfolk v. Duncan*, 872 F.Supp. 1381.—Fed Civ Proc 2470.1.

E.D.Pa. 1994. Only facts that may affect outcome of case under applicable law are "material" for summary judgment purposes. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Atlantic Mut. Ins. Co. v. Brotech Corp.*, 857 F.Supp. 423, affirmed 60 F.3d 813.—Fed Civ Proc 2470.1.

E.D.Pa. 1994. Factual dispute is "material" for summary judgment purposes only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Congdon v. Strine*, 854 F.Supp. 355.—Fed Civ Proc 2470.1.

E.D.Pa. 1994. A factual dispute is "material," for summary judgment purposes, if it might affect outcome of action under governing law.—*Curry v. Pennsylvania Turnpike Com'n*, 843 F.Supp. 988.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. For summary judgment purposes, factual dispute is "material" only if it might affect the outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*SPS Technologies, Inc. v. Baker Material Handling Corp.*, 153 B.R. 148.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. For purposes of summary judgment motion, fact is "material" if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Richardson v. John F. Kennedy Memorial Hosp.*, 838 F.Supp. 979.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. Factual dispute is “material” for summary judgment purposes only if it might affect outcome of the suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Beaver v. Dansk Industri Syndicat A/S (DISA)*, 838 F.Supp. 206.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. Representation is “material,” for purposes of determining whether insurance policy may be rescinded under Pennsylvania law for fraud or misrepresentation, if insurer would not have insured party had it known about concealed information, if information would have caused insurer to demand higher premium, or if information would have affected insurer’s ability to evaluate degree and character of risk; representation does not have to relate to claimed disability for which benefits are sought, as long as representation is relevant to risk assumed.—*Montgomery v. Federal Ins. Co.*, 836 F.Supp. 292.—Insurance 3001.

E.D.Pa. 1993. For purposes of motion for summary judgment, issue is “genuine” if fact finder could reasonably hold in nonmovant’s favor with respect to that issue and fact is “material” if it would influence outcome under governing law.—*Allstate Ins. Co. v. Brown*, 834 F.Supp. 854.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. Fact is “material” for purposes of summary judgment if it might affect outcome of action under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Jones v. Chieffo*, 833 F.Supp. 498, affirmed 22 F.3d 301.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. Misrepresentations or omissions are only “material” for purposes of securities fraud analysis if there is substantial likelihood that reasonable investor would have viewed accurate disclosure as significantly altering total mix of information available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—*Vosgerichian v. Commodore Intern.*, 832 F.Supp. 909, order vacated on reconsideration 862 F.Supp. 1371.—Sec Reg 60.27(1), 60.28(11).

E.D.Pa. 1993. Fact is “material” for purposes of summary judgment motion if it might affect outcome of suit under governing substantive law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Travelers Indem. Co. v. Fantozzi By and Through Fantozzi*, 825 F.Supp. 80.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. Only facts that may affect outcome of case under applicable law are “material” for summary judgment purposes; mere existence of some alleged factual dispute between parties will not defeat otherwise properly supported motion for summary judgment. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*American Intern. Airways, Inc. v. American Intern. Group, Inc.*, 816 F.Supp. 1058.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. For purposes of summary judgment, fact is “material” if outcome of suit might be affected under governing law, and dispute qualifies as “genuine” only if reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Bloom v. Consolidated*

Rail Corp., 812 F.Supp. 553, reversed 41 F.3d 911.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. “Material” facts for purposes of summary judgment are those facts that might affect outcome of suit under substantive law governing claims made. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Long v. Board of Educ. of City of Philadelphia*, 812 F.Supp. 525, affirmed 8 F.3d 811.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. For summary judgment purposes, “material” facts are those facts that might affect outcome of suit under substantive law governing claims made.—*Philadelphia Musical Soc., Local 77 v. American Federation of Musicians of U.S. and Canada*, 812 F.Supp. 509.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. Whether fact is “material,” so that dispute about it will preclude summary judgment, is determined by reference to substantive evidentiary standards that apply to case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Independence Public Media of Philadelphia, Inc. v. Pennsylvania Public Television Network Com’n*, 808 F.Supp. 416, reconsideration denied 813 F.Supp. 335.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. To obtain summary judgment, moving party must establish that no genuine issues of material fact remain in dispute; issue is “genuine” only if there is sufficient evidentiary basis for reasonable jury to find for nonmoving party, while factual dispute is “material” if it might affect outcome of action under governing law. Fed.Rules Civ.Proc.Rules 56, 56(c), 28 U.S.C.A.—*Mendel v. Home Ins. Co.*, 806 F.Supp. 1206.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. “Material” facts which preclude summary judgment are those that may affect outcome of case under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Buehl v. Lehman*, 802 F.Supp. 1266.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. Factual dispute is “material,” thereby precluding summary judgment, only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Jones v. AT & T Co.*, 798 F.Supp. 1137, affirmed 981 F.2d 1247.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. A factual dispute is “material,” for purposes of summary judgment, if it might affect outcome of action under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Tri-County Business Campus Joint Venture v. Clow Corp.*, 792 F.Supp. 984.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. For purposes of summary judgment motion, only facts that may affect outcome of case under applicable law are “material.” Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Jordan v. Berman*, 792 F.Supp. 380, affirmed in part, vacated in part 20 F.3d 1250, on remand 1995 WL 141465.—Fed Civ Proc 2470.1.

E.D.Pa. 1991. Asserted disputes of fact are “material” so as to preclude summary judgment if their resolution could affect the outcome of the case under applicable substantive law. Fed.Rules

Civ.Proc.Rule 56(c), 28 U.S.C.A.—Slotterback By and Through Slotterback v. Interboro School Dist., 766 F.Supp. 280.—Fed Civ Proc 2470.1.

E.D.Pa. 1987. Perjurious testimony before grand jury is “material” if truthful answers could have led to more fruitful investigation of broader subject matter of grand jury’s inquiry, even where statute of limitations on underlying crimes has run. 18 U.S.C.A. § 1623.—U.S. v. Phillips, 674 F.Supp. 1144.—Perj 11(7).

E.D.Pa. 1982. Nondisclosed Florida apartment and travel expenses allegedly enjoyed by bank’s officers, directors and others, although possibly a waste of corporate assets and involving subtle mismanagement, did not constitute “material” information within meaning of antifraud provisions of federal securities laws, especially where shareholders were informed in bank’s proxy materials that some monies were being used for nonbusiness-related benefits, and therefore failure of bank’s proxy statement, which stated that officers and directors received personal benefits unrelated to bank affairs not in excess of \$5,000, to disclose Florida apartment and travel expenses did not violate antifraud provisions of federal securities laws. Securities Exchange Act of 1934, §§ 12(i), 14(a), 15 U.S.C.A. §§ 78l(i), 78n(a).—Bank and Trust Co. of Old York Road v. Hankin, 552 F.Supp. 1330.—Sec Reg 49.22(3).

E.D.Pa. 1981. Misrepresentation in annual report of computer leasing corporation, most of whose inventory consisted of older computer series, suggesting that new computer series would be more costly for all prospective users was not “material” where all of information concerning new computer series’ improved cost/performance ratio was well publicized and widely known in computer industry and thus there was no substantial likelihood that reasonable investor would have viewed disclosure of new series’ great efficiency as having significantly altered “total mix” of information already available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Beissinger v. Rockwood Computer Corp., 529 F.Supp. 770.—Sec Reg 60.46.

E.D.Pa. 1981. Even if statements in annual report of computer leasing corporation, most of whose inventory consisted of older computer series, regarding potential impact of manufacturer’s new computer series upon leasing corporation’s ability to re-lease its equipment, along with statement suggesting that new series would be more costly for all prospective users, contained misrepresentations or omissions, there was no basis for concluding that such statements were “material,” where, considering fact that information concerning potential adverse impact of new series was already available to public via various articles and announcements, as well as form filed as public record, market would have already been well aware of any uncertainty concerning leasing corporation’s future. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Beissinger v. Rockwood Computer Corp., 529 F.Supp. 770.—Sec Reg 60.46.

E.D.Pa. 1978. Asserted “newly discovered evidence” presented in defendants’ new trial motion would not be admissible at a new trial and, therefore, did not satisfy the requirement that it be “material” to the issues where the asserted new evidence implied some criminal conduct on the part of a key government witness but did not contain any allegation that the witness had been convicted in connection with the conduct or that the conduct in any way concerned the illegal activities for which defendants were being tried. Fed.Rules Crim.Proc. rule 33, 18 U.S.C.A.; Federal Rules of Evidence, rule 608(b), 28 U.S.C.A.—U.S. v. Byrne, 451 F.Supp. 109.—Crim Law 940.

E.D.Pa. 1974. False testimony is “material,” within meaning of statute making it an offense to knowingly make any false material declaration before a grand jury, if it has a natural tendency to influence the grand jury in its investigation; materiality is tested as of the time when the defendant appears before the grand jury. 18 U.S.C.A. § 1623.—U.S. v. Schiavo, 375 F.Supp. 475, affirmed 506 F.2d 1053.—Perj 11(7).

M.D.Pa. 2000. In the summary judgment context, fact is “material” if proof of its existence or nonexistence might affect the outcome of the suit under the applicable law.—P.C. Data Centers of Pa., Inc. v. Federal Express Corp., 113 F.Supp.2d 709.—Fed Civ Proc 2470.1.

M.D.Pa. 1998. Exculpatory evidence is “material,” for purposes of determining whether it should have been turned over to defendants prior to trial, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—U.S. v. Mariani, 7 F.Supp.2d 556.—Crim Law 700(2.1).

M.D.Pa. 1996. For summary judgment purposes, “material” facts are those which will affect outcome of trial under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Little v. Lycoming County, 912 F.Supp. 809, affirmed 101 F.3d 691.—Fed Civ Proc 2470.1.

M.D.Pa. 1993. For purposes of summary judgment, “material” facts are those which will affect outcome of trial under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—York Excavating Co., Inc. v. Employers Ins. of Wausau, 834 F.Supp. 733.—Fed Civ Proc 2470.1.

M.D.Pa. 1993. For purposes of determining whether summary judgment is inappropriate because of existence of material facts, fact is “material” if it will affect outcome of case under governing law.—American Ass’n of State Troopers, Inc. v. Preate, 832 F.Supp. 894.—Fed Civ Proc 2470.1.

M.D.Pa. 1992. Disputed fact is “material,” and precludes summary judgment, if proof of existence or nonexistence of fact would affect outcome of case under substantive law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Young v. Keohane, 809 F.Supp. 1185.—Fed Civ Proc 2470.1.

M.D.Pa. 1992. Issues of fact for summary judgment purposes are “genuine” only if reasonable jury, considering evidence presented, could find for

nonmoving party, and "material" facts are those which will affect outcome of trial under governing law.—*Rodgers v. Prudential Ins. Co., of America*, 803 F.Supp. 1024, affirmed 998 F.2d 1004.—*Fed Civ Proc* 2470.1.

W.D.Pa. 2002. Evidence is "material" if there is a reasonable probability that outcome of trial would have been different had the evidence been disclosed to the defense; standard is not satisfied by mere possibility that undisclosed information might have helped defense, or might have affected outcome of trial.—*Pursell v. Horn*, 187 F.Supp.2d 260.—*Crim Law* 700(2.1).

W.D.Pa. 1999. An omitted fact is "material," for purposes of William Act regulation of tender offers, if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Securities Exchange Act of 1934, § 14(e), 15 U.S.C.A. § 78n(e).—*Clearfield Bank & Trust Co. v. Omega Financial Corp.*, 65 F.Supp.2d 325.—*Sec Reg* 52.39(3).

W.D.Pa. 1998. Falsehoods in probable cause affidavit in support of arrest warrant are deemed to be "material" to finding of probable cause only if affidavit, with false material set to one side, is insufficient to establish probable cause.—*DiNicola v. DiPaolo*, 25 F.Supp.2d 630.—*Crim Law* 219.

W.D.Pa. 1996. Facts that could alter the outcome are "material" and disputes are "genuine," for summary judgment purposes, if evidence exists from which rational person could conclude that position of the person with the burden of proof on disputed issue is correct. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Baglio v. Baska*, 940 F.Supp. 819, affirmed 116 F.3d 467.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1996. A fact is "material," for purposes of summary judgment, when it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Kennedy v. Runyon*, 933 F.Supp. 480.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1996. In ERISA context, a misrepresentation is "material" if there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed retirement decision. Employee Retirement Income Security Act of 1974, § 2 et seq., as amended, 29 U.S.C.A. § 1001 et seq.—*Jordan v. Federal Exp. Corp.*, 914 F.Supp. 1180, affirmed in part, reversed in part 116 F.3d 1005.—*Pensions* 47.

W.D.Pa. 1994. Fact is "material" for summary judgment purposes only if it might affect outcome of case under governing substantive law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Oliver v. Johnson & Johnson, Inc.*, 863 F.Supp. 251.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1994. For purposes of summary judgment, fact is "material" if it might affect outcome of case under governing substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Barb v. Miles, Inc.*, 861 F.Supp. 356.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1993. A fact is "material," so as to preclude summary judgment, if proof of its existence

or nonexistence would affect outcome of lawsuit under substantive law applicable to case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Brantner v. Black & Decker Mfg. Co.*, 831 F.Supp. 454, affirmed 30 F.3d 1485.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1992. Fact is "material," for purposes of summary judgment motion, if proof of its existence or nonexistence would affect outcome of lawsuit under law applicable to case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Grassinger v. Welty*, 818 F.Supp. 862, affirmed 993 F.2d 224.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1992. A fact is "material," for purposes of summary judgment, if proof of its existence or nonexistence would affect outcome of lawsuit under substantive law applicable to the case. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Girard v. Allis Chalmers Corp., Inc.*, 787 F.Supp. 482.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1990. Factual issue is "material," so as to preclude entry of summary judgment, if issue's resolution will affect outcome of suit; nonmoving party bears burden of presenting evidence to show that genuine material issue exists. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Byrnes v. Herion, Inc.*, 757 F.Supp. 648.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1985. A fact is "material" for summary judgment purposes if its determination could affect outcome of case.—*E.E.O.C. v. Halls Motor Transit Co.*, 609 F.Supp. 852, vacated 789 F.2d 1011.—*Fed Civ Proc* 2470.1.

W.D.Pa. 1946. Sugar is a "material" within meaning of the Second War Powers Act of 1942, and Administrator of Office of Price Administration had power to ration sugar under the act, since "material" is any substance or matter from which anything is made or may be made. Second War Powers Act 1942, § 101 et seq., 50 U.S.C.A. Appendix, § 631 et seq.—*U.S. v. Grunenwald*, 66 F.Supp. 223.—*War* 303.

D.Puerto Rico 1997. "Material" facts alluded to in statute providing for tolling of limitations period where material facts are not known or reasonably knowable by government official are those essential to cause of action, i.e., those which give rise to claim; information available must be sufficient to establish claim on behalf of government. 28 U.S.C.A. § 2416(c).—*U.S. v. Stella Perez*, 956 F.Supp. 1046.—*Lim of Act* 95(1).

D.Puerto Rico 1996. Fact is "material," and genuine issue as to that fact will potentially preclude summary judgment, when fact is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Rayzor v. U.S.*, 937 F.Supp. 115, affirmed 121 F.3d 695.—*Fed Civ Proc* 2470.1.

D.Puerto Rico 1996. Factual dispute is "material," for summary judgment purposes, if it might affect outcome of the suit under the governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Gautier Rodriguez v. Mason Technologies, Inc.*, 931 F.Supp. 114.—*Fed Civ Proc* 2470.1.

D.Puerto Rico 1996. On motion for summary judgment, factual dispute is “material” if it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Ricardo Cruz Distributors, Inc. v. Pace Setter, Inc., 931 F.Supp. 106.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. For purposes of summary judgment motion, fact is “material” if it is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Hidalgo v. Overseas-Condado Ins. Agencies, Inc., 929 F.Supp. 555, affirmed 120 F.3d 328.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. For dispute to be “genuine” in context of motion for summary judgment, there must be sufficient evidence to permit reasonable trier of fact to resolve issue in favor of nonmoving party; for issue to be “material,” fact must be one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Irizarry v. Corporacion Insular De Seguros, 928 F.Supp. 141, vacated 111 F.3d 184.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. “Material,” for purposes of summary judgment, means that fact is one that might affect outcome of suit under governing law.—United Structures of America, Inc. v. G.R.G. Engineering, S.E., 927 F.Supp. 556.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. In context of determining whether issue of fact which is both genuine and material exists and precludes summary judgment, “genuine” means that evidence about fact is such that reasonable jury could resolve point in favor of nonmoving party, and “material” means that fact is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Mojica Escobar v. Roca, 926 F.Supp. 30.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. For summary judgment purposes, fact is “material” if, under applicable substantive law, it may affect result of case. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Cabot LNG Corp. v. Puerto Rico Elec. Power Authority, 922 F.Supp. 707.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. “Material,” for summary judgment purposes, means that fact is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Baez-Cruz v. Municipality of Comerio, 919 F.Supp. 552, vacated, opinion superseded 964 F.Supp. 578, affirmed 140 F.3d 24.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. “Material” fact, existence of which precludes grant of summary judgment, is fact that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Gonzalez v. Torres, 915 F.Supp. 511.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. For summary judgment purposes, “material” means that fact is one that might affect outcome of suit under governing law. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re

Quinones Rivera, 184 B.R. 178.—Bankr 2164.1; Fed Civ Proc 2470.1.

D.Puerto Rico 1995. For dispute to be “genuine,” for purposes of motion for summary judgment, there must be sufficient evidence to permit reasonable trier of fact to resolve issue in favor of nonmoving party; by same token, “material” fact, as would preclude summary judgment, is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Council of Co-owners of Ashford Medical Center v. Mendez, 913 F.Supp. 99.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. For summary judgment purposes, “material” fact, which is defined by substantive law, is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Caribbean Mushroom Co., Inc. v. Government Development Bank for Puerto Rico, 906 F.Supp. 70, reversed 102 F.3d 1307, on remand 980 F.Supp. 620.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. Government’s failure to provide requested evidence that is favorable to defendant constitutes violation of due process when the evidence is “material” to guilt or punishment; i.e., if there is reasonable probability that, had the evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 5.—Maravilla v. U.S., 901 F.Supp. 62, affirmed 95 F.3d 1146, certiorari denied 117 S.Ct. 1564, 520 U.S. 1202, 137 L.Ed.2d 710.—Const Law 268(5).

D.Puerto Rico 1995. Fact is “material” for summary judgment purposes if, under applicable substantive law, it may affect result of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Jorge Rivera Surillo & Co., Inc. v. Cerro Copper Products Co., 885 F.Supp. 358.—Fed Civ Proc 2470.1.

D.Puerto Rico 1994. In order for false documents submitted to department or agency of United States to be “material” for purposes of statute, it is not necessary that agency actually react to information provided. 18 U.S.C.A. § 1001.—U.S. v. Reyes Mercado, 871 F.Supp. 103.—Fraud 68.10(4).

D.Puerto Rico 1994. Factual dispute is “material” for summary judgment purposes if it might affect outcome of suit under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—U.S. v. \$200,226.00 in U.S. Currency, 864 F.Supp. 1414, vacated 57 F.3d 1061.—Fed Civ Proc 2470.1.

D.Puerto Rico 1993. For purpose of summary judgment motion, “genuine” means that evidence about issue is such that reasonable jury could resolve point in favor of nonmoving party, and “material” means that fact may alter outcome of litigation. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Toledo v. Ayerst-Wyeth Pharmaceutical, Inc., 852 F.Supp. 91.—Fed Civ Proc 2470.1.

D.Puerto Rico 1993. Fact is “material” for summary judgment purposes only if it affects outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Rodriguez v. U.S., 847 F.Supp. 231, af-

firmed 54 F.3d 41, rehearing and suggestion for rehearing denied.—Fed Civ Proc 2470.1.

D.Puerto Rico 1993. “Material” fact for summary judgment purposes, which is defined by substantive law, is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Marrero Garcia v. Irizarry, 829 F.Supp. 523, affirmed 33 F.3d 117.—Fed Civ Proc 2470.1.

D.Puerto Rico 1993. Omitted information is “material,” for purposes of claim under § 10(b) of Securities Exchange Act of 1934, only if there is substantial likelihood that reasonable shareholder would consider information important and would view its nondisclosure as significantly altering total mix of information available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Merino Vinas v. Boto, 827 F.Supp. 83, affirmed in part, reversed in part Merino Calenti v. Boto, 24 F.3d 335.—Sec Reg 60.28(11).

D.Puerto Rico 1992. For purpose of motion for summary judgment, “material” fact, is one which affects outcome of suit and which must be resolved before attending to related legal issues; materiality is defined by substantive law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—McCann v. Ruiz, 788 F.Supp. 109.—Fed Civ Proc 2470.1.

D.Puerto Rico 1991. For summary judgment purposes, “material” fact, which the substantive law will identify, is one which affects outcome of the suit and which must be resolved before tending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Alvarez Diaz v. Air France, 787 F.Supp. 258.—Fed Civ Proc 2470.1.

D.Puerto Rico 1991. Factual dispute on summary judgment motion is “material” if it affects outcome of litigation and “genuine” if manifested by substantial evidence going beyond allegations of complaint. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—El Fenix de Puerto Rico v. Serrano Gutierrez, 786 F.Supp. 1065.—Fed Civ Proc 2470.1.

D.Puerto Rico 1991. In order to determine whether factual dispute between parties is “material,” substantive law will identify which facts are material and only dispute over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Mercado Garcia v. Ponce Federal Bank, F.S.B., 779 F.Supp. 620, affirmed 979 F.2d 890.—Fed Civ Proc 2470.1.

D.Puerto Rico 1991. “Material” fact, for purposes of summary judgment motion, is one which affects outcome of suit and must be resolved before attending to related legal issues. Fed.Rules Civ. Proc.Rules 56, 56(c), 28 U.S.C.A.—Rexam Ltd. Partnership, S.E. v. Resolution Trust Corp., 766 F.Supp. 41, vacated 1991 WL 486908.—Fed Civ Proc 2470.1.

D.Puerto Rico 1991. A “material” fact which precludes grant of summary judgment is one which affects outcome of suit and must be resolved before

attending to related legal issues. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—Cassagnol-Figueroa v. U.S., 755 F.Supp. 514.—Fed Civ Proc 2470.1.

D.Puerto Rico 1990. “Material” fact, for summary judgment purposes, is one which affects outcome of suit and must be resolved before attending to related legal issues.—Davila v. Banco Cent. Corp., 749 F.Supp. 28.—Fed Civ Proc 2470.1.

D.Puerto Rico 1987. Facts are “material” for purposes of summary judgment motion if they constitute legal defense, or their existence or nonexistence might effect result of action, or if resolution of issues they raise is so essential that party against whom it is decided cannot prevail. Fed.Rules Civ. Proc.Rule 56(e), 28 U.S.C.A.; 28 U.S.C.A. § 1746.—Alvarado Morales v. Digital Equipment Corp., 669 F.Supp. 1173, affirmed 843 F.2d 613.—Fed Civ Proc 2470.1.

D.R.I. 1996. For summary judgment purposes, fact is “material” if it might affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—URI Cogeneration Partners, L.P. v. Board of Governors for Higher Education, 915 F.Supp. 1267.—Fed Civ Proc 2470.1.

D.R.I. 1993. A fact is “material” if it could affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Complaint of Ballard Shipping Co., 823 F.Supp. 68.—Fed Civ Proc 2470.1.

D.R.I. 1991. For summary judgment purposes, any fact that could affect outcome of suit is “material.” Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Gannon v. Narragansett Elec. Co., 777 F.Supp. 167.—Fed Civ Proc 2470.1.

D.R.I. 1990. In order to be actionable under proxy and antifraud provisions of Securities Exchange Act of 1934, omission or misstatement must be “material”; information is deemed material if reasonable investor might have considered it important in making investment decision at issue. Securities Exchange Act of 1934, §§ 10(b), 14(a), 15 U.S.C.A. §§ 78j(b), 78n(a).—Dowling v. Narragansett Capital Corp., 735 F.Supp. 1105.—Sec Reg 49.22(2), 60.28(11).

D.S.C. 1995. For purposes of summary judgment motion, issue of fact concerns “material” fact only if establishment of fact might affect outcome of lawsuit under governing substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Wilson Group, Inc. v. Quorum Health Resources, Inc., 880 F.Supp. 416.—Fed Civ Proc 2470.1.

D.S.C. 1993. Fact is deemed “material,” for purposes of determining whether there is genuine issue as to any material fact on motion for summary judgment, if proof of its existence or nonexistence would affect disposition of case under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 843 F.Supp. 1027, affirmed 46 F.3d 1125.—Fed Civ Proc 2470.1.

D.S.C. 1993. Fact is deemed “material” for purposes of motion for summary judgment if proof of its existence or nonexistence would affect disposi-

tion of case under applicable law. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—*Knight v. American Nat. Fire Ins. Co.*, 831 F.Supp. 1284.—Fed Civ Proc 2470.1.

D.S.D. 1994. To determine which facts are “material,” for purpose of summary judgment motion, court should look to substantive law in dispute and identify facts which are critical to outcome. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Planned Parenthood, Sioux Falls Clinic v. Miller*, 860 F.Supp. 1409, affirmed 63 F.3d 1452, certiorari denied *Janklow v. Planned Parenthood, Sioux Falls Clinic*, 116 S.Ct. 1582, 517 U.S. 1174, 134 L.Ed.2d 679.—Fed Civ Proc 2470.1.

E.D.Tenn. 1996. Under Tennessee law, misrepresentation is “fraudulent” or “material,” and will potentially allow voiding of contract, if maker intends his assertion to induce party to manifest his assent and maker knows or believes that assertion is not in accord with facts, does not have confidence that he states or implies in truth of assertion, or knows that he does not have basis that he states or implies for assertion, and additionally is “material” if it will be likely to induce reasonable person to manifest his assent, or if maker knows that it will be likely to induce recipient to do so. Restatement (Second) of Contracts § 162.—*Menuskin v. Williams*, 940 F.Supp. 1199, appeal dismissed 98 F.3d 1342, affirmed in part, reversed in part 145 F.3d 755, 1998 Fed.App. 147P.—Contracts 94(2).

E.D.Tenn. 1994. A fact is “material” and precludes granting of summary judgment if proof of that fact would have effect of establishing or repudiating essential element of cause of action or defense asserted by a party. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Eddins v. Geneva Pharmaceuticals, Inc.*, 877 F.Supp. 413.—Fed Civ Proc 2470.1.

M.D.Tenn. 1995. Fact is “material” for purposes of summary judgment only if its resolution will affect outcome of lawsuit. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Brannon v. OshKosh B’Gosh, Inc.*, 897 F.Supp. 1028.—Fed Civ Proc 2470.1.

M.D.Tenn. 1995. Fact is “material” for purposes of summary judgment motion only if its resolution will affect outcome of lawsuit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Carver v. Dennis*, 886 F.Supp. 636, affirmed 104 F.3d 847, 1997 Fed. App. 18P.—Fed Civ Proc 2470.1.

M.D.Tenn. 1992. Under Tennessee law, misrepresentation is “material” if it is such as would naturally and reasonably have influenced insurer to decline application for insurance.—*Kentucky Cent. Life Ins. Co. v. Jones*, 799 F.Supp. 53, affirmed 7 F.3d 233.—Insurance 2958.

W.D.Tenn. 1999. For purpose of determining whether Chapter 11 debtor’s nondisclosures as to true value of its sole asset were material, so as to warrant revocation of confirmation order for fraud, information was “material” if it was information that was necessary for court to decide whether each requirement for confirmation had been satisfied.

Bankr.Code, 11 U.S.C.A. §§ 1129, 1144.—*Tenn-Fla Partners v. First Union Nat. Bank of Florida*, 229 B.R. 720, affirmed *In re Tenn-Fla Partners*, 226 F.3d 746, 2000 Fed.App. 326P.—Bankr 3569.

W.D.Tenn. 1973. Where both those facts which were misrepresented by municipal bond firm’s salesmen and those facts which the salesmen failed to disclose constituted the kind of information to which a reasonable investor would attach significance in making an investment decision, those facts were “material” within the meaning of the Securities Acts’ antifraud provisions and Rule 10b–5. Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Securities and Exchange Commission v. Charles A. Morris & Associates, Inc.*, 386 F.Supp. 1327.—Sec Reg 27.42, 60.32(2).

E.D.Tex. 1999. A false statement or omission is “material,” for Rule 10b–5 purposes, if its disclosure would alter the total mix of facts available to an investor and if there is a substantial likelihood a reasonable shareholder would consider it important to the investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—*McNamara v. Bre-X Minerals Ltd.*, 57 F.Supp.2d 396, reconsideration denied 68 F.Supp.2d 759.—Sec Reg 60.28(1), 60.46.

E.D.Tex. 1996. To be entitled to habeas corpus relief based on prosecutor’s suppression of evidence, petitioner must show that prosecution suppressed evidence, that the evidence was favorable to the defense, and that the evidence was material; evidence is “material” only if there is reasonable probability that, had evidence been disclosed, result of proceeding would have been different. 28 U.S.C.A. § 2254.—*Cockrum by Welch v. Johnson*, 934 F.Supp. 1417, reversed 119 F.3d 297.—Hab Corp 480.

E.D.Tex. 1996. For purpose of summary judgment rule requiring movant to demonstrate that there are no genuine issues of material fact, “material” fact is one that might affect outcome of suit under applicable substantive law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Poole v. Jefferson County Sheriff’s Dept.*, 921 F.Supp. 431.—Fed Civ Proc 2470.1.

E.D.Tex. 1996. Substantive law underlying claim in issue identifies which facts are “material” for purposes of motion for summary judgment. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Gilbert v. Texas Mental Health and Mental Retardation*, 919 F.Supp. 1031.—Fed Civ Proc 2470.1.

E.D.Tex. 1994. “Material” fact for purposes of summary judgment rule is one that might affect outcome of suit under applicable substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Barnes v. Calgon Corp.*, 864 F.Supp. 622.—Fed Civ Proc 2470.1.

N.D.Tex. 2002. Withheld or falsified information is “material,” for purpose of determining whether patent is invalid due to inequitable conduct, if there is substantial likelihood that reason-

able examiner would have considered information important in deciding whether to allow patent to issue.—*Harris Corp. v. Ericsson Inc.*, 194 F.Supp.2d 533.—Pat 97.

N.D.Tex. 1996. Summary judgment is proper when there is no genuine issue as to any material fact and movant is entitled to judgment as matter of law, with dispute being “genuine” if issue could be resolved in favor of either party, and fact being “material” if it might reasonably affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Snyder General Corp. v. Great American Ins. Co.*, 928 F.Supp. 674, affirmed 133 F.3d 373, rehearing denied.—Fed Civ Proc 2470, 2470.1, 2470.4.

N.D.Tex. 1996. An issue is “material,” for summary judgment purposes, only if its resolution could affect outcome of action. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*McAlpin v. National Semiconductor Corp.*, 921 F.Supp. 1518.—Fed Civ Proc 2470.1.

N.D.Tex. 1995. For purposes of summary judgment motion, fact is “material” if it might reasonably affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Tompkins v. Cyr*, 878 F.Supp. 911.—Fed Civ Proc 2470.1.

N.D.Tex. 1994. Issue is “material” for summary judgment purposes only if its resolution could affect outcome of action. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Papaila v. Uniden America Corp.*, 840 F.Supp. 440, affirmed 51 F.3d 54, certiorari denied 116 S.Ct. 187, 516 U.S. 868, 133 L.Ed.2d 124.—Fed Civ Proc 2470.1.

N.D.Tex. 1993. Undisclosed art is “material,” for purposes of determining whether failure to disclose prior art is inequitable conduct that permits declaration of invalidity, if reasonable patent examiner would have considered it important in deciding whether to issue patent. 35 U.S.C.A. § 282.—*Buehler AG v. Ocrim S.p.A.*, 836 F.Supp. 1305, affirmed 34 F.3d 1080, rehearing denied, in banc suggestion declined.—Pat 98.

N.D.Tex. 1992. For withheld information to be “material,” as element of inequitable conduct, it is not necessary to show that it would have defeated claims of patent; it suffices to show that reasonable examiner would have considered it in determining whether to issue patent.—*Buehler AG v. Ocrim, S.p.A.*, 836 F.Supp. 1291.—Pat 97.

N.D.Tex. 1992. Information is considered “material,” for purpose of determining whether patent is rendered unenforceable because of material misrepresentation of information before Patent and Trademark Office (PTO), where there is substantial likelihood that reasonable examiner would consider it important in deciding whether to allow application to issue as a patent.—*Medical Designs, Inc. v. Medical Technology, Inc.*, 786 F.Supp. 614.—Pat 97.

N.D.Tex. 1984. Misstatement or omission is “material” within meaning of section of Securities Exchange Act prohibiting the inclusion in tender offer of any untrue statement of material fact or the

omission of any material fact necessary to make statements not misleading if there is substantial likelihood that reasonable shareholder would consider it important in deciding whether to accept tender offer. Securities Exchange Act of 1934, § 14(e), as amended, 15 U.S.C.A. § 78n(e).—*Gearhart Industries, Inc. v. Smith Intern., Inc.*, 592 F.Supp. 203, affirmed in part, modified in part 741 F.2d 707.—Sec Reg 52.39(3).

S.D.Tex. 2002. For misrepresentation or omission to be “material,” as required for it to be actionable under Rule 10b-5, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*In re Azurix Corp. Securities Litigation*, 198 F.Supp.2d 862.—Sec Reg 60.28(11).

S.D.Tex. 1999. A fact is “material” for summary judgment purposes if its resolution in favor of one party might affect the outcome of the suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Thirsty's, Inc. v. U.S. Dept. of Labor*, 57 F.Supp.2d 431.—Fed Civ Proc 2470.1.

S.D.Tex. 1997. Fact is “material” for summary judgment purposes if its resolution in favor of one party might affect outcome of suit under governing law.—*Reno v. Metropolitan Transit Authority*, 977 F.Supp. 812.—Fed Civ Proc 2470.1.

S.D.Tex. 1996. Omission from bank's records is “material,” within meaning of “false entries” statute, if it has capacity to impair or pervert the functioning of government agency. 18 U.S.C.A. § 1006.—*U.S. v. Schnitzer*, 942 F.Supp. 323, affirmed in part, reversed in part 145 F.3d 721.—Banks 509.10.

S.D.Tex. 1995. Suppressed evidence is “material” for purposes of *Brady* claim if there is reasonable probability that had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—*Guerra v. Collins*, 916 F.Supp. 620, affirmed 90 F.3d 1075.—Crim Law 700(2.1).

S.D.Tex. 1995. Evidence is “material,” for purposes of holding that government is required to preserve evidence that might be expected to play a significant role in suspect's defense, if it possesses exculpatory value that was apparent before evidence was destroyed and if defendant could not, through other reasonably available means, obtain comparable evidence. U.S.C.A. Const.Amend. 5.—*U.S. v. Sandoval*, 913 F.Supp. 494.—Crim Law 700(9).

S.D.Tex. 1995. Fact is “material” for purposes of summary judgment if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Houston Helicopters, Inc. v. Canadian Helicopters Ltd.*, 901 F.Supp. 1225.—Fed Civ Proc 2470.1.

S.D.Tex. 1995. Fact is “material” for summary judgment purposes if its resolution in favor of one

party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Olin v. Tidewater Inc.*, 897 F.Supp. 968.—Fed Civ Proc 2470.1.

S.D.Tex. 1995. For purposes of summary judgment, fact is “material” if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Rohan for Rohan v. Exxon Corp.*, 896 F.Supp. 666.—Fed Civ Proc 2470.1.

S.D.Tex. 1995. Fact is “material,” for purposes of summary judgment if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*In re Browning-Ferris Industries Inc. Securities Litigation*, 876 F.Supp. 870.—Fed Civ Proc 2470.1.

S.D.Tex. 1995. Fact is “material,” precluding summary judgment, if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Brookside Farms v. Mama Rizzo's, Inc.*, 873 F.Supp. 1029.—Fed Civ Proc 2470.1.

S.D.Tex. 1994. Fact is “material” for purposes of summary judgment motion if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Hashop v. Rockwell Space Operations Co.*, 867 F.Supp. 1287.—Fed Civ Proc 2470.1.

S.D.Tex. 1994. Fact is “material” for purposes of summary judgment if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Rodriguez v. Township of Holiday Lakes*, 866 F.Supp. 1012.—Fed Civ Proc 2470.1.

S.D.Tex. 1994. For purpose of summary judgment motion, fact is “material” if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Luxemburg v. Texas A & M University System*, 863 F.Supp. 412, affirmed 59 F.3d 1240.—Fed Civ Proc 2470.1.

S.D.Tex. 1993. Fact is “material” for purposes of summary judgment motion if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*West v. Brazos River Harbor Nav. Dist.*, 836 F.Supp. 1331.—Fed Civ Proc 2470.1.

S.D.Tex. 1993. Fact is “material” for summary judgment purposes if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*McDonald v. City of Freeport, Tex.*, 834 F.Supp. 921.—Fed Civ Proc 2470.1.

S.D.Tex. 1993. A fact is “material,” for purposes of summary judgment, if its resolution in favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Standard Fire Ins. Co. v. Rominger*, 827 F.Supp. 1277.—Fed Civ Proc 2470.1.

S.D.Tex. 1992. A fact is “material,” for purposes of summary judgment, if its resolution in

favor of one party might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*J. Gerber & Co., Inc. v. M/V Inagua Tania*, 828 F.Supp. 458.—Fed Civ Proc 2470.1.

W.D.Tex. 1998. Even inadmissible evidence may be “material” under *Brady* rule requiring prosecutor to disclose exculpatory evidence. U.S.C.A. Const.Amend. 14.—*Cordova v. Johnson*, 993 F.Supp. 473, appeal denied 157 F.3d 380, certiorari denied 119 S.Ct. 922, 525 U.S. 1131, 142 L.Ed.2d 971.—Crim Law 700(2.1).

W.D.Tex. 1998. Undisclosed exculpatory evidence is “material” under *Brady* rule if there is reasonable probability that result of proceeding would have been different had evidence been disclosed; reasonable probability of different result is shown when nondisclosure puts case in different light so as to undermine confidence in jury verdict. U.S.C.A. Const.Amend. 14.—*Cordova v. Johnson*, 993 F.Supp. 473, appeal denied 157 F.3d 380, certiorari denied 119 S.Ct. 922, 525 U.S. 1131, 142 L.Ed.2d 971.—Crim Law 700(2.1).

W.D.Tex. 1998. Mental health records of capital murder defendant's coperpetrator, which defendant argued would have been useful to impeach sentencing-phase testimony of coperpetrator's prosecutor about why he did not seek death penalty for coperpetrator, were not “material” to defense, and thus state's purported withholding of them did not violate *Brady* rule requiring disclosure of exculpatory evidence, where defendant's sentencing-phase strategy focused on the fact that coperpetrator received life sentence, not on the reasons why coperpetrator received one. U.S.C.A. Const.Amend. 14.—*Cordova v. Johnson*, 993 F.Supp. 473, appeal denied 157 F.3d 380, certiorari denied 119 S.Ct. 922, 525 U.S. 1131, 142 L.Ed.2d 971.—Sent & Pun 1747.

W.D.Tex. 1996. There are three elements to valid *Brady* claim: (1) prosecution must suppress or withhold evidence, (2) which is favorable, and (3) material to defense; undisclosed evidence is “material” if there is reasonable probability that result would have been different had evidence been disclosed, and “reasonable probability” is shown when nondisclosure puts case in different light so as to undermine confidence in jury verdict. U.S.C.A. Const.Amend. 14.—*Adanandus v. Johnson*, 947 F.Supp. 1021, affirmed 114 F.3d 1181.—Crim Law 700(2.1).

W.D.Tex. 1995. On motion for summary judgment, fact question is “material” if it involves disputes over facts that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Brenham Community Protective Ass'n v. U.S. Dept. of Agriculture*, 893 F.Supp. 665.—Fed Civ Proc 2470.1.

W.D.Tex. 1994. Fact question is “material” for summary judgment purposes if it involves disputes over facts that might affect outcome of suit under the governing law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*Marshall v. Housing Authority of City of Taylor*, 866 F.Supp. 999, affirmed 51 F.3d 1045.—Fed Civ Proc 2470.1.

D.Vt. 1996. Summary judgment shall be granted if there is no "genuine" issue as to any "material" fact, and moving party is entitled to judgment as a matter of law; fact is material when it affects outcome of suit under governing law, and there is genuine dispute over material fact when evidence requires fact-finder to resolve parties' differing versions of truth at trial. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Billado v. Parry, 937 F.Supp. 337.—Fed Civ Proc 2470.1, 2470.4.

D.Vt. 1996. Summary judgment shall be granted if there is no genuine issue as to any material fact, and moving party is entitled to judgment as a matter of law; fact is "material" when it affects outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—McKenny v. John V. Carr & Son, Inc., 922 F.Supp. 967.—Fed Civ Proc 2470, 2470.1, 2470.4.

E.D.Va. 2001. For purposes of offense of filing a false income tax return, statement is "material" if it has a natural tendency to influence or impede the IRS in determining correctness of a tax return; a correct amount of income is a material matter. 26 U.S.C.A. § 7206(1).—U.S. v. O'Connor, 158 F.Supp.2d 697.—Int Rev 5263.30.

E.D.Va. 2000. Evidence is "material," in *Brady* inquiry, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—U.S. v. Ward, 85 F.Supp.2d 629.—Crim Law 700(2.1).

E.D.Va. 1999. Corporate insider's duty to disclose information under federal securities fraud laws arises only in situations which are "material," that is, which are both extraordinary in nature and reasonably certain to have a substantial effect on the market price of the security if disclosed. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Byelick v. Vivadelli, 79 F.Supp.2d 610.—Sec Reg 60.28(11).

E.D.Va. 1997. Evidence relevant to statutory mitigating factor would certainly be "favorable" evidence pertaining to punishment under *Brady* in that it may justify sentence of life imprisonment as opposed to death, and it would be "material" in that, if there is substantial basis for claiming that the evidence will establish a statutory mitigating factor, there is reasonable probability that its disclosure would affect result of sentencing proceedings.—U.S. v. Beckford, 962 F.Supp. 804.—Sent & Pun 1746.

E.D.Va. 1996. In trial context, *Brady/Giglio* evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome.—Banks v. U.S., 920 F.Supp. 688.—Crim Law 700(2.1).

E.D.Va. 1996. *Brady/Giglio* evidence consisting of information regarding conjugal visits which federal agents allowed government informant to receive was "material" and prosecution's failure to disclose it rendered drug defendant's guilty plea invalid; information could have been used by de-

fendant to attack credibility of informant and agents, who arranged "sting" operation, and there was reasonable probability that information would have convinced defendant to take case to trial, particularly as defendant's words and actions were only criminal when seen in context, which could only be supplied for jury by informant and agents.—Banks v. U.S., 920 F.Supp. 688.—Crim Law 273.1(1), 700(3).

E.D.Va. 1995. For omission to be "material," for federal securities fraud purposes, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered "total mix" of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5(b).—Connelly v. General Medical Corp., 880 F.Supp. 1100.—Sec Reg 60.28(11).

E.D.Va. 1995. Facts are deemed "material," so that genuine issues as to facts will preclude summary judgment, if they might affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Goldman v. Food Lion, Inc., 879 F.Supp. 33.—Fed Civ Proc 2470.1.

E.D.Va. 1994. Fact is "material" for summary judgment purposes when proof of its existence or nonexistence would affect outcome of case. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Northwestern Mut. Life Ins. Co. v. Atlantic Research Corp., 847 F.Supp. 389.—Fed Civ Proc 2470.1.

E.D.Va. 1993. Factual representation is "material" to the risk and may justify rescission of insurance policy if representation would reasonably influence insurer's decision whether to issue policy.—Breault v. Berkshire Life Ins. Co., 821 F.Supp. 410.—Insurance 2958.

E.D.Va. 1982. Under securities regulation prohibiting publication of untrue statements of material fact in connection with sale of securities, fact is not "material" if there is not substantial likelihood that reasonable investor would consider fact important in making investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Safecard Services, Inc. v. Dow Jones & Co., Inc., 537 F.Supp. 1137, affirmed 705 F.2d 445, certiorari denied 104 S.Ct. 109, 464 U.S. 831, 78 L.Ed.2d 111.—Sec Reg 60.46.

W.D.Va. 1998. Evidence is "material," for *Brady* purposes, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. U.S.C.A. Const.Amend. 5.—U.S. v. Coleman, 11 F.Supp.2d 689.—Crim Law 700(2.1).

W.D.Va. 1992. Evidence is "material," for purposes of *Brady v. Maryland*, if there is reasonable probability that results of proceeding would be different if evidence were disclosed.—U.S. v. Shifflett, 798 F.Supp. 354.—Crim Law 700(2.1).

D.Virgin Islands 1995. For summary judgment purposes, "material" fact is one that will affect outcome of suit under applicable law, and dispute over material fact is "genuine" if evidence is such that reasonable jury could return verdict for non-

moving party. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Porter v. Samuel, 889 F.Supp. 213.—Fed Civ Proc 2470.1.

E.D.Wash. 1994. Misstatement in affidavit in support of search warrant, that defendant and his companion were married, was not “material,” and thus did not require *Franks* hearing to determine if suppression of evidence derived from search was required; defendant and his companion held themselves out as husband and wife by, inter alia, using same last name and listing common address on their driver’s licenses. U.S.C.A. Const.Amend. 4.—U.S. v. Domitrovich, 852 F.Supp. 1460, affirmed 57 F.3d 1078.—Searches 199.

N.D.W.Va. 1994. To withstand motion for summary judgment, nonmoving party must offer evidence from which fair-minded jury could return verdict for party and that evidence must consist of facts which are “material,” meaning that facts might affect outcome of suit under applicable law, as well as “genuine,” meaning that they create fair doubt rather than encourage mere speculation. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Hall v. Wiesner, 844 F.Supp. 1120.—Fed Civ Proc 2470.1, 2544.

N.D.W.Va. 1993. To withstand motion for summary judgment, nonmovant must offer evidence from which fair minded jury could return verdict for nonmovant after examining record as a whole; such evidence must consist of facts which are “material,” meaning that facts might affect outcome of action under applicable law, as well as “genuine,” meaning that they create fair doubt rather than encourage mere speculation. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Bayerle v. Godwin, 825 F.Supp. 113.—Fed Civ Proc 2470.1, 2545.

N.D.W.Va. 1992. Evidence necessary to defeat motion for summary judgment must consist of facts which are “material,” meaning that facts might affect outcome of suit under applicable law, as well as “genuine,” meaning that they create fair doubt rather than encourage mere speculation. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Laurita Energy Corp. v. Voto Mfrs. Sales Co., 791 F.Supp. 610.—Fed Civ Proc 2470.1.

S.D.W.Va. 1993. Nonpublic information allegedly misappropriated by attorney for state lottery was “material” for purposes of federal securities laws inasmuch as information related to one manufacturer’s forthcoming receipt of exclusive contract to supply gaming equipment for expanded statewide video lottery, and approval of expansion was near certainty given lottery commissioners’ predisposition to expand lottery. Securities Exchange Act of 1934, §§ 10(b), 32, 15 U.S.C.A. §§ 78j(b), 78ff.—U.S. v. ReBrook, 837 F.Supp. 162, affirmed in part, reversed in part 58 F.3d 961, certiorari denied 116 S.Ct. 431, 516 U.S. 970, 133 L.Ed.2d 346.—Sec Reg 60.28(11).

E.D.Wis. 1999. Evidence is “material” to the defense, for purposes of government’s disclosure obligations, if there is a reasonable probability that if the evidence had been disclosed to the defense the result of the proceeding would have been different; a “reasonable probability” is that sufficient to

undermine confidence in the outcome.—Braun v. Powell, 77 F.Supp.2d 973, reversed 227 F.3d 908, rehearing en banc denied, certiorari denied 121 S.Ct. 1164, 531 U.S. 1182, 148 L.Ed.2d 1023.—Crim Law 700(2.1).

E.D.Wis. 1999. In light of evidence before jury that cooperating witness was unsavory, lying, drug-using criminal, prosecutor’s failure to disclose to defense counsel and to jury that, contrary to terms of plea agreement as disclosed, he had agreed to reconsider whether to recommend that witness be sentenced to incarceration was not “material,” as required to warrant new trial; there was no reasonable probability that jury would have assessed witness’ credibility differently had change in plea bargain been disclosed.—Braun v. Powell, 77 F.Supp.2d 973, reversed 227 F.3d 908, rehearing en banc denied, certiorari denied 121 S.Ct. 1164, 531 U.S. 1182, 148 L.Ed.2d 1023.—Crim Law 700(4).

E.D.Wis. 1997. Under Wisconsin law, insured’s numerous false statements concerning his activities over weekend when suspicious fire occurred on his property were “material,” as required for property insurer to deny coverage based on policy’s “concealment or fraud” provision.—American Family Mut. Ins. Co. v. Schley, 978 F.Supp. 870.—Insurance 3185.

E.D.Wis. 1996. “Material” facts, for summary judgment purposes, are those facts which, under the governing substantive law, might affect outcome of the suit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Collins v. Milwaukee Housing Assistance Corp., 927 F.Supp. 1152.—Fed Civ Proc 2470.1.

E.D.Wis. 1996. For a fact to be “material,” for summary judgment purposes, it must relate to a disputed matter that might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Kropp v. McCaughtry, 915 F.Supp. 85.—Fed Civ Proc 2470.1.

E.D.Wis. 1995. Only disputes over facts that might affect outcome of suit under governing law are “material” so as to properly preclude entry of summary judgment. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Kendrick v. East Delavan Baptist Church, 886 F.Supp. 1465.—Fed Civ Proc 2470.1.

E.D.Wis. 1995. “Material” facts, genuine issue of which will preclude summary judgment, are those facts which, under governing substantive law, might affect outcome of suit; dispute over such facts is “genuine” if evidence is such that reasonable jury could return verdict for nonmoving party.—Chambers v. Briggs & Stratton Corp., 883 F.Supp. 374.—Fed Civ Proc 2470.1.

E.D.Wis. 1994. While “material” fact, for purposes of summary judgment motion, is one that is outcome determinative under governing law, “genuine” issue as to that material fact is raised only if evidence is such that reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Heath v. Massey-Ferguson Parts Co., a Div. of Massey-Ferguson, Inc., 869

F.Supp. 1379, reconsideration denied, reversed 71 F.3d 256.—Fed Civ Proc 2470.1.

E.D.Wis. 1993. Under federal securities laws, seller of security is only liable for his misrepresentations or omissions in oral communications or prospectus as to facts that are “material”; material misstatement or omission is one that significantly alters total mix of information available to investor. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 771 (2).—Wamser v. J.E. Liss, Inc., 838 F.Supp. 393.—Sec Reg 25.62(4).

E.D.Wis. 1993. For purposes of motion for summary judgment, “material” fact is one that is outcome determinative under governing law, and “genuine”, issue as to that material fact is raised only if evidence is such that reasonable jury could return verdict for nonmoving party.—Northwestern Nat. Ins. Co. v. Allstate Ins. Co., 832 F.Supp. 1280.—Fed Civ Proc 2470.1.

E.D.Wis. 1992. Officer cannot be held liable under § 1983 for alleged omissions in search warrant affidavit unless those omissions would have required suppression of fruits of his search in any criminal proceeding, and suppression is not warranted unless omissions were “material,” i.e., unless probable cause is destroyed by removing omissions from warrant. 42 U.S.C.A. § 1983.—Supreme Video, Inc. v. Schauz, 808 F.Supp. 1380, affirmed in part, reversed in part 15 F.3d 1435, on remand 927 F.Supp. 321, affirmed 111 F.3d 133.—Civil R 132.1.

E.D.Wis. 1992. Facts are “material,” for purpose of summary judgment motion, which, under governing substantive law, might effect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Akbar v. Borgen, 803 F.Supp. 1479.—Fed Civ Proc 2470.1.

W.D.Wis. 1995. A fact is “material,” for summary judgment purposes, only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—U.S. ex rel. Fallon v. Accudyne Corp., 921 F.Supp. 611.—Fed Civ Proc 2470.1.

W.D.Wis. 1994. A fact is “material,” for summary judgment purposes, only if it might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic, 881 F.Supp. 1309.—Fed Civ Proc 2470.1.

D.Wyo. 1978. Issue is “material,” within meaning of rule authorizing summary judgment if there is no “genuine issue as to any material fact,” if facts alleged are such as to constitute legal defenses, or are of a nature so as to affect result of action, or issue is so essential that party against whom it is resolved may not prevail. Fed.Rules Civ.Proc. rules 56, 56(c), 28 U.S.C.A.—Romero v. Union Pac. R. Co., 459 F.Supp. 741, vacated and remanded 615 F.2d 1303.—Fed Civ Proc 2470.1.

9th Cir.BAP (Cal.) 1999. False oath is “material,” for denial-of-discharge purposes, if it bears some relationship to debtor’s business transactions or estate, or if it concerns discovery of debtor’s assets or business dealings, or existence and disposi-

tion of debtor’s property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Wills, 243 B.R. 58.—Bankr 3282.1.

9th Cir.BAP (Cal.) 1999. Proposal to substitute entirely new collateral for a substantial secured claim is, at least with regard to the affected creditor, a “material” modification of a proposed plan.—In re Brewster, 243 B.R. 51.—Bankr 3569.

9th Cir.BAP (Cal.) 1998. Chapter 7 debtor-attorney’s failure to disclose to client-creditor, as required by professional conduct rule, that their relationship had become adverse due to loan transaction and that client had right to seek independent legal advice was “material,” for purposes of exception to discharge for fraud, since professional conduct rule that attorney violated was enacted for the purpose of preventing attorney from taking advantage of client by entering into adverse commercial transactions, which is what happened in debtor’s case. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A); Cal.Prof.Conduct Rule 3-300.—In re Tallant, 218 B.R. 58.—Bankr 3353(14.25).

9th Cir.BAP (Cal.) 1994. Creditor failed to show that misrepresentations allegedly made by Chapter 7 debtor in obtaining loan were “material,” as required for resulting debt to be nondischargeable for false financial statement, as evidence only indicated that debtor was contractually liable for money loaned; although \$3,000 per month of debtor’s deferred income was included on financial statement, financial statement only asked for income, and did not ask for income to be divided, debtor merely stated value of land without stating amount of equity, but credit application only asked for value of asset information, and debtor testified that omission of some property, in which debtor had about \$113,000 of equity, was not deliberate. (Per Russell, J., with one Judge concurring in result.) Bankr.Code, 11 U.S.C.A. § 523(a)(2).—In re Berr, 172 B.R. 299.—Bankr 3353(12.20).

8th Cir.BAP (Iowa) 2000. Threshold of “materiality,” under the “false oath” discharge exception, is fairly low: subject matter of false oath is “material,” and thus sufficient to bar discharge, if it bears relationship to debtor’s business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of debtor’s property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Sears, 246 B.R. 341.—Bankr 3282.1.

6th Cir.BAP (Ohio) 1999. Fact is “material,” for purposes of requirement of “false oath” discharge denial provision that debtor’s false statement related materially to the bankruptcy case, if fact concerns discovery of assets, business dealings, or existence or disposition of property. Bankr. Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Hamo, 233 B.R. 718, 1999 Fed.App. 7P.—Bankr 3282.1.

Bkrty.E.D.Ark. 2000. In determining whether debtor has made a false oath, for discharge denial purposes, debtor’s omission is “material” if it relates to the discovery of assets. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Baldrige, 256 B.R. 284.—Bankr 3284.

Bkrty.E.D.Ark. 1992. Chapter 7 debtor made misstatements in bankruptcy schedules, voluntary petition, and statement of financial affairs were "material" so as to justify denial of discharge on basis of making of false oath or account; statement that defendant's corporation was insolvent was patently and materially false, and debtor failed to list receivables, ownership interest in personal property, and beneficial interest in condominium as well as loan. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Radcliffe, 141 B.R. 1015.—Bankr 3283, 3284.

Bkrty.W.D.Ark. 2000. False statement is "material," for discharge denial purposes, if it bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Mathis, 258 B.R. 726.—Bankr 3282.1.

Bkrty.W.D.Ark. 1997. "Material" false oath, of kind which may warrant denial of debtor's discharge, is one that bears a relationship to debtor's business transactions or to bankruptcy estate, or that concerns the discovery of assets, business dealings, or existence or disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Guajardo, 215 B.R. 739.—Bankr 3282.1.

Bkrty.W.D.Ark. 1994. "False oath" justifying denial of discharge must be "material," i.e., must bear relationship to debtor's business transactions or estate, or concern discovery of assets, business dealings, or existence and disposition of property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Cummins, 166 B.R. 338.—Bankr 3282.1.

Bkrty.C.D.Cal. 1997. Information is "material," for purposes of establishing violation of § 10(b) of Securities Exchange Act and Rule 10b-5, if reasonable investor would view information as important in making investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re Fink, 217 B.R. 614.—Sec Reg 60.28(11).

Bkrty.C.D.Cal. 1992. Dispute about material fact is "genuine," for summary judgment purposes, if evidence offered would enable reasonable jury to return verdict for nonmoving party; fact is "material" if it affects outcome of lawsuit. Fed.Rules Civ.Proc.Rule 56(e), 28 U.S.C.A.—In re Palmer, 140 B.R. 765.—Fed Civ Proc 2470.1.

Bkrty.C.D.Cal. 1991. Broker's misrepresentations and nondisclosures to potential investor, including its false representation that investment program did not involve sale of futures contracts and failure to disclose that two percent commission would be calculated based on full contract value rather than on monies actually paid by investor, qualified as "material" misrepresentations and nondisclosures under statutory exception to discharge. Bankr.Code, 11 U.S.C.A. § 523(a)(2).—In re Scheuer, 125 B.R. 584.—Bankr 3353(1.20).

Bkrty.E.D.Cal. 1991. Misrepresentation is deemed "material," for purpose of determining whether debt is nondischargeable on grounds that

debtor obtained property by use of materially false financial statement, if credible evidence is presented that creditor would not have entered into subject transaction had the truth been revealed. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Masegian, 134 B.R. 402.—Bankr 3353(12.15).

Bkrty.S.D.Cal. 1998. For purposes of establishing genuine issue of material fact so as to preclude summary judgment, "material" means relevant to element of claim or defense and whose existence might affect the outcome of lawsuit. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.; Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—In re Lombardo, 224 B.R. 774.—Bankr 2164.1; Fed Civ. Proc 2470.1.

Bkrty.D.Conn. 2002. In the context of the discharge provision, a statement is "material" if it is pertinent to the discovery of assets; furthermore, even if each falsehood or omission considered separately may be too immaterial to warrant a denial of a discharge, a multitude of discrepancies, falsehoods and omissions taken collectively may be of sufficient materiality to bar the debtor's discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Kurtaj, 284 B.R. 528.—Bankr 3282.1.

Bkrty.D.Del. 2002. Fact that lead contractor on nuclear power plant decommissioning project was \$1.7 million behind in its payments to subcontractors and materialmen, and did not have ability to pay subcontractors and materialmen even if it received progress payment to which it was not contractually entitled absent proof of payment, constituted "material" default under decommissioning agreement, of kind that permitted contract to be terminated, though this \$1.7 million delinquency represented only .67% of overall contract amount of \$252 million.—In re Stone & Webster, Inc., 279 B.R. 748.—Contracts 261(3).

Bkrty.M.D.Fla. 2003. For debtor's false oath to be "material," as required by discharge exception, it must bear some relationship to debtor's business transactions or estate, or concern the discovery of assets, business dealings or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Bratcher, 289 B.R. 205.—Bankr 3282.1.

Bkrty.M.D.Fla. 2002. Allegedly disputed facts, whose presence would simply have been cumulative evidence as to why customer's loan to Chapter 11 debtor was not in the ordinary course of either party's business, were not "material," for summary judgment purposes; presence or absence of these facts was not dispositive of the issues. Bankr.Code, 11 U.S.C.A. § 547(c)(2)(A); Fed.Rules Bankr.Proc. Rule 7056, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Diagnostic Instrument Group, Inc., 283 B.R. 87.—Bankr 2164.1.

Bkrty.M.D.Fla. 2002. For a false oath to be considered "material," for discharge denial purposes, it must be shown that it bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Sadler, 282 B.R. 254.—Bankr 3282.1.

Bkrcty.M.D.Fla. 2002. When determining if a debtor should be denied a discharge because of a false oath, a test of materiality is used to ensure that debtors are not denied discharge for inconsequential or technical omissions; materiality is broadly defined in that a false oath or claim is "material" if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property, or, in other words, a material fact is one that affects the substance of the case, rather than merely going to the form of the case. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Leffingwell, 279 B.R. 328.—Bankr 3282.1.

Bkrcty.M.D.Fla. 2002. Chapter 7 debtors' falsification of husband's address was "material," since administration of estate in alternate venue presented logistical and economic disadvantages; trustee was less likely to have personal knowledge of local real estate market and economy, she was less likely to have established relationships with bankruptcy professionals who regularly worked in locale where property was located, obtaining first-hand information about estate's assets would have been more difficult and less cost-efficient, and trustee would have been hindered in securing witnesses in event that contested matter arose. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A); 28 U.S.C.A. § 157(b)(2)(A).—In re Leffingwell, 279 B.R. 328.—Bankr 3282.1.

Bkrcty.M.D.Fla. 2002. Chapter 7 debtors' false oaths or omissions, relating to their financial condition, were "material," although debtors asserted that errors were inadvertent because filing of their petition was "rushed"; debtors were not kind of people who made such errors and debtors' false oaths and omissions were significant errors that directly related to their financial condition and circumstances leading up to bankruptcy filing. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Leffingwell, 279 B.R. 328.—Bankr 3284.

Bkrcty.M.D.Fla. 2002. Chapter 7 debtors' false oaths and omissions relating to property of the estate, although allegedly exempt, were "material," since omissions affected creditors' and trustee's ability to understand debtors' financial affairs and transactions. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Leffingwell, 279 B.R. 328.—Bankr 3283.

Bkrcty.M.D.Fla. 2001. "Material" omission, sufficient to bar discharge, is one that bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Green, 268 B.R. 628.—Bankr 3284.

Bkrcty.M.D.Fla. 2000. For debtor's false oath to be considered "material," for discharge denial purposes, it must be shown that it bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of debtor's property.

Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Perry, 252 B.R. 541.—Bankr 3282.1.

Bkrcty.M.D.Fla. 2000. For false oath to be "material," and thus sufficient to bar debtor's discharge, the subject matter of false oath must bear some relationship to debtor's business transactions or estate, or concern the discovery of assets, business dealings, or the existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Stevens, 250 B.R. 750.—Bankr 3282.1.

Bkrcty.M.D.Fla. 2000. Chapter 7 debtor's failure to include, as asset on his bankruptcy schedules, certain nonresidential property that was awarded to him by divorce court, and that represented roughly 99% of his unencumbered non-exempt assets, was "material" omission, for purpose of deciding whether debtor's discharge could be denied based on his "false oath." Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Stevens, 250 B.R. 750.—Bankr 3284.

Bkrcty.M.D.Fla. 1999. False oath may be considered "material," so as to provide basis for denial of debtor's discharge, if it bears relationship to debtor's business transactions or his or her estate. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Hunter, 229 B.R. 851.—Bankr 3282.1.

Bkrcty.M.D.Fla. 1998. For debtor's false oath to be considered "material," so as to warrant denial of discharge, it must be shown that it bears relationship to debtor's business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(2)(A).—In re McElroy, 229 B.R. 483.—Bankr 3282.1, 3283.

Bkrcty.M.D.Fla. 1998. For false oath to be considered "material," for discharge denial purposes, it must be shown that it bears relationship to debtor's business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Poland, 222 B.R. 374.—Bankr 3282.1.

Bkrcty.M.D.Fla. 1998. Oath or omission is "material," for purposes of false oaths discharge denial provision, if what is left out bears relationship to debtor's business transactions or estate or concerns discovery of assets, business dealings or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Ross, 217 B.R. 319.—Bankr 3282.1.

Bkrcty.M.D.Fla. 1995. For purposes of denying debtor's discharge for omitting material assets on schedules, omission is "material" if it bears relationship to debtor's business transactions or assets. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Chiasson, 183 B.R. 293.—Bankr 3284.

Bkrcty.M.D.Fla. 1993. Ordinarily, promise of borrower that funds borrowed will be used for specific purpose will not be "material," especially in cases of unsecured loan, in determining whether failure to use funds for that purpose will render loan debt nondischargeable on grounds that debtor

made false representation concerning material fact. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Weinhardt, 156 B.R. 677.—Bankr 3353(1.20).

Bkrty.S.D.Fla. 1999. Subject matter of a debtor's false oath is "material" and sufficient to bar a general discharge if it bears a relationship to debtor's business transactions or to the estate, or concerns the discovery of assets, business dealings, or the existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Feldman, 242 B.R. 88.—Bankr 3282.1.

Bkrty.S.D.Fla. 1999. "Material" change, within meaning of Florida statute that authorizes prospective purchaser to rescind his/her contract for purchase of condominium unit within 15 days of receiving amendment from developer that "materially alters or modifies the offering," is a change to a significant extent or degree. West's F.S.A. § 718.503.—In re Suncoast East Associates, 241 B.R. 476.—Condo 4.

Bkrty.S.D.Fla. 1997. Subject matter of false oath is "material," and thus sufficient to bar debtor's discharge, if it bears relationship to debtor's business transactions or estate, or if it concerns discovery of debtor's assets, business dealings, or existence or disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Lordy, 214 B.R. 650.—Bankr 3282.1.

Bkrty.M.D.Ga. 1999. Omission from debtor's bankruptcy schedules is "material," as required for omission to qualify as false oath of kind sufficient to support denial of debtor's discharge, if it bears relationship to debtor's business transactions or estate, or if it concerns the discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Cutts, 233 B.R. 563.—Bankr 3284.

Bkrty.N.D.Ga. 2000. Misrepresentation is "material," under section of the Bankruptcy Code governing denial of discharge on the basis of debtor's false oath, if it bears relationship to debtor's business transactions or estate, or concerns discovery of assets, business dealings, or existence or disposition of property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Dulock, 250 B.R. 147.—Bankr 3282.1.

Bkrty.N.D.Ga. 1996. For purposes of denial of discharge for making false oath or account, the false oath must be "material," meaning that it bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or existence or disposition of property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Parnes, 200 B.R. 710.—Bankr 3282.1.

Bkrty.N.D.Ga. 1996. Fact is "material," for summary judgment purposes, if it might affect outcome of suit under governing substantive law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Cox, 200 B.R. 706.—Fed Civ Proc 2470.1.

Bkrty.N.D.Ga. 1996. Fact is "material," for summary judgment purposes, if it might affect outcome of suit under governing substantive law. Fed.

Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.—In re Decorating Direct, Inc., 200 B.R. 702.—Bankr 2164.1; Fed Civ Proc 2470.1.

Bkrty.N.D.Ga. 1995. Fact is "material," for summary judgment purposes, if it might affect outcome of proceeding under governing substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Matter of Musgrove, 187 B.R. 808.—Fed Civ Proc 2470.1.

Bkrty.S.D.Ga. 2000. Subject matter of a false oath is "material," and thus sufficient to bar discharge, if it bears a relationship to the bankruptcy estate. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Horton, 252 B.R. 245.—Bankr 3282.1.

Bkrty.S.D.Ga. 2000. Items omitted from Chapter 7 debtor's bankruptcy schedules, including a shotgun, a horse, two junked trucks, and certain horse-related equipment, were "material," even though items arguably had little or no market value; each item bore a relationship to the estate because each was properly property of the estate. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Horton, 252 B.R. 245.—Bankr 3284.

Bkrty.D.Idaho 1999. In determining whether debtor's false statement is "material," for discharge denial purposes, court looks to whether statement bears a relationship to debtor's estate, and concerns the discovery of assets, or the existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Downey, 242 B.R. 5.—Bankr 3282.1.

Bkrty.C.D.Ill. 2002. Chapter 7 debtor's failure to disclose on his statement of financial affairs, and in response to direct question from trustee at his first meeting of creditors, transfer of his joint tenancy interest in house to his wife two months before filing for bankruptcy protection, was "material" for purposes of exception to discharge provision, even though debtor asserted that there was no equity in the house available for his creditors; house was debtor's single most valuable asset and there was significant question as to existence of nonexempt equity. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Wilson, 290 B.R. 333.—Bankr 3283, 3284.

Bkrty.C.D.Ill. 2002. In the context of the exception to discharge provision, a false oath may be "material" even though it does not result in any detriment or prejudice to the creditor; since a debtor's claim of exemption is subject to objection and denial, full disclosure of all assets is required of debtors, including assets that are claimed as fully exempt. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Wilson, 290 B.R. 333.—Bankr 3282.1.

Bkrty.C.D.Ill. 2002. Even assets that may be fully exempt bear a relationship to the debtor's estate and concern the existence of the debtor's property; a failure to disclose an asset, exempt or not, is "material" in the context of the exception to discharge provision unless the value of the asset itself is insubstantial. Bankr.Code, 11 U.S.C.A.

§ 727(a)(4)(A).—In re Wilson, 290 B.R. 333.—Bankr 3282.1.

Bkrtcy.N.D.Ill. 2002. False oath may be “material,” for denial-of-discharge purposes, even though it does not result in any detriment or prejudice to creditor. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Bostrom, 286 B.R. 352, affirmed Stathopoulos v. Bostrom, 2003 WL 403138.—Bankr 3282.1.

Bkrtcy.N.D.Ill. 2001. Matter is “material,” for purposes of the “false oath” discharge denial provision, if it bears a relationship to debtor’s business transactions or estate or leads to the discovery of assets, business dealings, or existence or disposition of property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Holstein, 272 B.R. 463.—Bankr 3282.1.

Bkrtcy.N.D.Ill. 2000. Statement is deemed “material,” for purposes of section of the Bankruptcy Code permitting denial of Chapter 7 debtor’s discharge for making false oath or account, if it relates to debtor’s estate, discovery of assets, disposition of property, or debtor’s entitlement to discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Senese, 245 B.R. 565.—Bankr 3282.1.

Bkrtcy.N.D.Ill. 2000. False statements contained in Chapter 7 debtor’s schedules and statement of financial affairs were “material” to debtor’s bankruptcy estate and to his entitlement to a discharge in bankruptcy, for discharge denial purposes, where there were numerous omissions and misstatements pertaining to debtor’s personal property and to the nature and sources of his income. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Senese, 245 B.R. 565.—Bankr 3283, 3284.

Bkrtcy.N.D.Ill. 1999. Under Illinois law, a misrepresentation on an insurance application is “material” if a reasonably careful and intelligent person would believe that the omitted facts substantially increased the insurer’s risk under the policy and might cause the insurer to reject the application. S.H.A. 215 ILCS 5/154.—In re Green, 241 B.R. 550, appeal dismissed Green v. Massachusetts Casualty, 2000 WL 33679412, reconsideration denied, vacated 6 Fed.Appx. 338, on remand 269 B.R. 782, affirmed 42 Fed.Appx. 815, affirmed 269 B.R. 782, affirmed 42 Fed.Appx. 815.—Insurance 2958.

Bkrtcy.N.D.Ill. 1999. Insured’s misrepresentations in his application for life insurance policy, that he had never been diagnosed as suffering from any nervous or mental condition and had not consulted medical practitioner in past five years, were “material” misrepresentations, of kind sufficient, under Illinois law, to permit insurance company to rescind rider to policy waiving insurance premiums; at time insured signed application, he was receiving disability benefits for his paranoid schizophrenia, and had received psychotherapy for his condition during relevant five-year period.—In re Green, 241 B.R. 187, affirmed Green v. LifeUSA Ins. Co., 259 B.R. 295, affirmed 42 Fed.Appx. 815.—Insurance 3003(11).

Bkrtcy.N.D.Ill. 1999. Misrepresentation on application for insurance is “material” if reasonably

careful and intelligent person would believe that omitted facts substantially increased insurer’s risk under policy and might cause insurer to reject application.—In re Green, 241 B.R. 187, affirmed Green v. LifeUSA Ins. Co., 259 B.R. 295, affirmed 42 Fed.Appx. 815.—Insurance 2964.

Bkrtcy.N.D.Ill. 1997. False oath may be “material,” for debtor discharge purposes, even though it does not result in any detriment or prejudice to creditor. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Yonkers, 219 B.R. 227.—Bankr 3282.1.

Bkrtcy.N.D.Ill. 1997. Chapter 7 debtor-husband’s failure to list a source of income earned from part-time employment on his bankruptcy schedules was a nondisclosure which related to a “material” matter, and which warranted denial of debtor’s discharge based on his “false oath,” though debtor had only minimal earnings from this second job and allegedly increased the wages that he reported from his primary employer to account for such additional income as he earned from this second employer. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Yonkers, 219 B.R. 227.—Bankr 3284.

Bkrtcy.N.D.Ill. 1997. False oath is “material,” for debtor discharge purposes, if it is pertinent to discovery of assets or past transactions of debtor, or to debtor’s entitlement to discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Yonkers, 219 B.R. 227.—Bankr 3282.1.

Bkrtcy.N.D.Ill. 1997. Matter is “material” for purposes of false oath provision of discharge statute if it is pertinent to discovery of assets, past transactions, or debtor’s entitlement to discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Baker, 205 B.R. 125, motion denied 206 B.R. 510.—Bankr 3282.1.

Bkrtcy.N.D.Ill. 1994. For purposes of motion for summary judgment, fact is “material” if governing substantive law identifies fact as one that might affect outcome of suit. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Telesphere Communications, Inc., 167 B.R. 495, reversed 205 B.R. 535.—Bankr 2164.1; Fed Civ Proc 2470.1.

Bkrtcy.N.D.Ill. 1988. Any false oath sufficient to deny debtor’s discharge must relate to material fact and must be made knowingly and fraudulently; claim or statement is “material” if it hinders administration of estate. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Calisoff, 92 B.R. 346.—Bankr 3282.1.

Bkrtcy.S.D.Ill. 1994. Seller’s obligation, under contract for sale of business to Chapter 12 debtors, to pay off loans secured by personal property before completion of payments by debtors was merely part of seller’s obligation to deliver good title and did not constitute separate “material” obligation, breach of which would justify rescission, and did not render contract “executory,” subject to assumption or rejection in bankruptcy. Bankr.Code, 11 U.S.C.A. § 365(a).—In re Fitch, 174 B.R. 96.—Bankr 3106.

Bkrcty.N.D.Ind. 2001. For debtor's false oath to be "material," for discharge denial purposes, the testimony must relate to such things as debtor's estate, assets, liabilities and financial affairs, the disposition of property, or debtor's entitlement to discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Hall, 258 B.R. 908.—Bankr 3282.1, 3283.

Bkrcty.N.D.Ind. 1990. Factual dispute is "material," for summary judgment purposes, if it is outcome-determinative.—In re Associated Bicycle Service, Inc., 128 B.R. 436.—Fed Civ Proc 2470.1.

Bkrcty.S.D.Ind. 1998. False oath is "material," for discharge denial purposes, if it bears relationship to debtor's business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Scott, 227 B.R. 834.—Bankr 3282.1.

Bkrcty.N.D.Iowa 1998. Chapter 7 debtors' intentional failure to disclose, on their bankruptcy schedules, their ownership of 14 to 15 pounds of marijuana qualified as "material" nondisclosure, within meaning of "false oath" exception to discharge, though trustee could not have sold marijuana even if it had been disclosed and creditors may not have benefitted financially; nondisclosure related to discovery of debtors' assets and existence of their property, even if it had no value to trustee or creditors. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Tripp, 224 B.R. 95.—Bankr 3284.

Bkrcty.N.D.Iowa 1997. Subject matter of omission is not "material," for purposes of false oath discharge denial, unless it relates to Chapter 7 debtor's personal transactions, or concerns discovery of assets, financial dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Magnani, 223 B.R. 177.—Bankr 3282.1.

Bkrcty.D.Kan. 1992. Debtor's misrepresentation is "material," within meaning of statutory exception to discharge, if it would likely affect conduct of reasonable person with reference to transaction in question. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Tam, 136 B.R. 281.—Bankr 3353(1.15).

Bkrcty.W.D.Ky. 1982. Whether statement is "material" for purpose of exception to discharge-ability of debts for false financial statements depends mainly upon whether complainant relied upon it partially or entirely; reliance must have been contributing cause for extension of credit. Bankr.Code, 11 U.S.C.A. § 523(a), (a)(2)(B).—In re Aldrich, 16 B.R. 825.—Bankr 3353(12.15).

Bkrcty.D.Md. 1994. Debtor's false oath is "material," within meaning of statutory exception to discharge, if it bears relationship to debtor's business transactions or estate, or concerns discovery of assets, business dealings, or existence of disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Richman, 168 B.R. 578.—Bankr 3282.1.

Bkrcty.D.Mass. 1996. Fact is considered "material" for summary judgment purposes if it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.; Fed.Rules Bankr.Proc., Rule 7056, 11 U.S.C.A.—In re Friedman, 200 B.R. 1.—Bankr 2164.1; Fed Civ Proc 2470.1.

Bkrcty.D.Mass. 1994. Chapter 7 debtor's failure to list in his schedules nonassumable contract between debtor and bank was not "material" omission from bankruptcy schedules, justifying denial of discharge. Bankr.Code, 11 U.S.C.A. §§ 365(c)(2), (e)(2)(B), 727(a)(4)(A).—In re Boutiette, 168 B.R. 474.—Bankr 3284.

Bkrcty.E.D.Mich. 1999. Chapter 7 debtor's initial failure to list personal injury claim on his bankruptcy schedules did not warrant denial of discharge based on debtor's "false oath," where debtor amended schedules to add claim prior to first meeting of creditors, settlement proceeds were ultimately turned over to trustee, and trustee was not required to expend any time or resources investigating this asset; under these circumstances, debtor was not shown to have acted with requisite fraudulent intent in omitting asset, and debtor's initial omission was not "material" to bankruptcy case. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Guttman, 237 B.R. 643.—Bankr 3284.

Bkrcty.E.D.Mich. 1999. Chapter 7 debtor's failure to list on his bankruptcy schedules the substantial debt that was owed to him by his and his mother's family-owned corporation was sufficient to warrant denial of debtor's discharge based on his "false oath"; evidence established that debtor's omission of asset was not inadvertent but intentional, and debt, as substantial potential asset, was clearly "material" to bankruptcy case. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Guttman, 237 B.R. 643.—Bankr 3284.

Bkrcty.E.D.Mich. 1991. Question of whether Chapter 7 debtor has in fact read bankruptcy schedules which she signs, as stated above her signature, is "material" for purposes of statute providing for denial of discharge if debtor knowingly and fraudulently, in or in connection with bankruptcy case, made false oath or account; disclaimer stating that debtor had not read schedules or striking a part of preprinted declaration that debtor had read schedules would put trustee and creditors on notice that reliability of information contained in documents was suspect. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Sumpter, 136 B.R. 690, affirmed 170 B.R. 908, affirmed in part, reversed in part 64 F.3d 663, certiorari denied Sumpter v. U.S., 116 S.Ct. 1673, 517 U.S. 1187, 134 L.Ed.2d 777.—Bankr 3282.1.

Bkrcty.D.Minn. 2002. Materiality threshold, in adversary proceeding to deny debtor's discharge based on his/her "false oath," is fairly low: subject matter of false oath is "material," and thus sufficient to bar discharge, where it bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or existence and disposition of debtor's property.

Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Unruh, 278 B.R. 796.—Bankr 3282.1.

Bkrty.E.D.Mo. 1998. Creditor was not entitled to specific performance of her oral agreement with third party, pursuant to which creditor agreed to sell, and third party agreed to purchase, creditor's claims against Chapter 11 debtor, where agreement was contingent upon creditor's presenting third party with letter from trustee indicating that trustee had no objections to sale, and upon property that secured creditor's claims being free from any clouds on title, neither of which contingencies was fulfilled; contingencies were "material" to parties' agreement, as third party might incur substantial costs if forced to remove clouds on titles, or if bankruptcy trustee decided to challenge transaction.—In re Powell, 224 B.R. 412.—Spec Perf 59.

Bkrty.W.D.Mo. 1999. Omission of assets that were worth between \$250,000.00 and \$300,000.00 from Chapter 7 debtor's bankruptcy schedules qualified as "material" omission, of kind that would support denial of debtor's discharge based on his "false oaths" if assets were omitted with requisite fraudulent intent. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Stanke, 234 B.R. 449.—Bankr 3284.

Bkrty.W.D.Mo. 1999. Subject matter of debtor's false oath is "material," within meaning of discharge exception, if it bears a relationship to debtor's business transactions or estate, or if it concerns discovery of debtor's assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Stanke, 234 B.R. 449.—Bankr 3282.1.

Bkrty.W.D.Mo. 1988. Debtor's failure to disclose more than \$6 million in debts on financial statement submitted in support of loan application constituted "material" omission such as might render loan nondischargeable. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Kroh, 87 B.R. 1004.—Bankr 3353(12.20).

Bkrty.D.Mont. 1998. Chapter 7 debtor's knowing failure to disclose her current, married name on her bankruptcy schedules was "material" falsehood, of kind sufficient to warrant denial of debtor's discharge based on her false oath or account, in that this nondisclosure, which was allegedly motivated by desire to protect debtor's husband from embarrassment of having his colleagues learn that his wife had filed for bankruptcy, had direct impact on creditors' and trustee's ability to discover debtor's assets and/or business dealings. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Schmitz, 224 B.R. 149.—Bankr 3282.1.

Bkrty.D.Mont. 1998. Financial statement that leaves any discrepancy between overall impression left by statement and the endorser's true financial status gives rise to a "material" falsehood, for debt dischargeability purposes. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Kidd, 219 B.R. 278.—Bankr 3353(12.15).

Bkrty.D.N.H. 1999. Fact is "material," for purpose of "false oath" discharge exception, whenever

it bears relationship to debtor's business transactions or concerns the discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Emerson, 244 B.R. 1.—Bankr 3282.1.

Bkrty.D.N.H. 1995. For purposes of rule governing motions for summary judgment, "material" means that fact has the potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—In re Smith, 189 B.R. 240.—Fed Civ Proc 2470.1.

Bkrty.D.N.H. 1995. For summary judgment purposes, "material" fact is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(a), 28 U.S.C.A.—In re Jodoin, 185 B.R. 98.—Fed Civ Proc 2470.1.

Bkrty.E.D.N.Y. 1999. Error on Chapter 7 debtor's bankruptcy schedules, when debtor listed his interest in former marital residence, which he owned as tenant in common with his former wife, as entireties property, was not "material" falsehood, of kind that would warrant denial of debtor's discharge based on his "false oaths," where debtor timely disclosed his divorced status and trustee was not misled. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Murray, 238 B.R. 523, reversed and remanded 249 B.R. 223.—Bankr 3283.

Bkrty.E.D.N.Y. 1999. Chapter 7 debtor's intentional/reckless omissions from his bankruptcy schedules, when debtor failed to properly quantify his interest in pension plan and failed to disclose loan that he obtained from plan shortly prior to his bankruptcy filing, did not rise to level of "material" omissions, of kind that would warrant denial of debtor's discharge based on his "false oaths," where pension plan and any distribution therefrom were exempt from claims of creditors under governing state law, such that debtor's nondisclosure did not adversely affect trustee's administration or liquidation of property of estate. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Murray, 238 B.R. 523, reversed and remanded 249 B.R. 223.—Bankr 3284.

Bkrty.E.D.N.Y. 1999. Chapter 7 debtor's intentional/reckless omissions from his bankruptcy schedules, in failing to schedule certain loans, including "soft loans" from family members which the lenders may not have expected debtor to repay and debtor's contingent liability to ex-wife if she paid more than her fair share of certain joint debts, were not "material" omissions, of kind that would warrant denial of debtor's discharge based on his "false oaths," where debtor's case was a no-asset case, in which omitted creditors would receive neither better nor worse treatment from empty hands of trustee. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Murray, 238 B.R. 523, reversed and remanded 249 B.R. 223.—Bankr 3284.

Bkrty.E.D.N.Y. 1996. For purposes of false financial statement exception to discharge, in evaluating whether false statement is "material," court inquiry is whether lender would have made loan had he known debtor's true financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Launzel-Pennes, 191 B.R. 6.—Bankr 3353(12.15).

Bkrcty.E.D.N.Y. 1996. Under New York law, breach of contract is "material" if it is so substantial as to defeat purpose of transaction or so severe as to justify other party's suspension of performance.—In re Spectrum Information Technologies, Inc., 190 B.R. 741.—Contracts 317.

Bkrcty.S.D.N.Y. 2003. Chapter 7 debtor's alleged misrepresentation that she and her husband did not own certain real property to which bank could have looked for satisfaction of corporate debt was not "material" misrepresentation, upon which bank relied when it agreed, based on debtor's and her husband's guarantee and pledge of other assets, to restructure corporate indebtedness; accordingly, any such misrepresentation by debtor would not provide basis to except this restructured obligation from discharge as one for money obtained by debtor's false financial statement. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Wong, 291 B.R. 266.—Bankr 3353(12.15).

Bkrcty.S.D.N.Y. 2003. "Material" misrepresentations, such as may provide basis to except debt from discharge as one for money obtained by debtor's false statement in writing regarding his or an insider's financial condition, are substantial inaccuracies, of type which would generally affect a lender's decision to lend; guidepost for court is whether lender would have made loan had it known of debtor's true financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Wong, 291 B.R. 266.—Bankr 3353(12.15).

Bkrcty.S.D.N.Y. 1999. Plan fiduciary's misrepresentation to employee covered by plan will be regarded as "material," and will violate fiduciary's obligation not to materially mislead those to whom duties of loyalty and prudence are owed, if there is substantial likelihood that it would mislead reasonable employee in making an adequately informed retirement decision. Employee Retirement Income Security Act of 1974, § 404(a)(1), 29 U.S.C.A. § 1104(a)(1).—In re Bidermann Industries U.S.A., Inc., 241 B.R. 76.—Pensions 43.1.

Bkrcty.S.D.N.Y. 1998. Fact is "material," for summary judgment purposes, only if it affects the result of proceeding. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Crystal Apparel, Inc., 220 B.R. 806.—Bankr 2164.1; Fed Civ Proc 2470.1.

Bkrcty.S.D.N.Y. 1997. Fact is "material," for summary judgment purposes, only if it affects result of proceeding. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re CIS Corp., 214 B.R. 108.—Fed Civ Proc 2470.1.

Bkrcty.S.D.N.Y. 1997. Under New York law, test for determining whether misrepresentation in insurance application is "material," such that policy issued in reliance thereon is void ab initio, is whether failure to furnish true answer defeats or seriously interferes with exercise of insurance company's right to accept or reject application; major question is thus whether company has been induced to accept application which it might otherwise have refused.—In re UFG Intern., Inc., 207 B.R. 793, corrected.—Insurance 2958.

Bkrcty.S.D.N.Y. 1994. False oath may be "material," for bankruptcy discharge purposes, even though it does not result in any detriment or prejudice to creditor. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Sicari, 187 B.R. 861.—Bankr 3282.1.

Bkrcty.S.D.N.Y. 1993. Fact is considered "material" for summary judgment purposes if it might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, 160 B.R. 882.—Fed Civ Proc 2470.1.

Bkrcty.S.D.N.Y. 1992. Fact is "material," for summary judgment purposes, only if it affects the result of the proceeding. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.; Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.—In re Hooker Investments, Inc., 145 B.R. 138.—Fed Civ Proc 2470.1.

Bkrcty.S.D.N.Y. 1990. False statement may be "material," within meaning of "false oath" exception to discharge, even though it pertains to asset of de minimis value and does not result in detriment or prejudice to creditors. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Arcuri, 116 B.R. 873.—Bankr 3283.

Bkrcty.S.D.N.Y. 1986. Fact is "material," such that any genuine dispute regarding its existence or nonexistence would be sufficient to defeat motion for summary judgment, where it tends to resolve any issue which has been properly raised. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Weiss-Wolf, Inc., 60 B.R. 969.—Fed Civ Proc 2470.1.

Bkrcty.D.N.D. 1999. Subject matter of false oath is "material," for denial-of-discharge purposes, if it bears some relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re McLaren, 236 B.R. 882.—Bankr 3282.1.

Bkrcty.D.N.D. 1992. Statement or omission of statement can be "material," for purpose of determining whether debt is nondischargeable based on submission of materially false financial statement, if it paints substantially untruthful picture of financial condition by misrepresenting information of the type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Frey, 150 B.R. 742.—Bankr 3353(12.15).

Bkrcty.N.D.Ohio 2000. For purposes of a summary judgment motion, a fact is "material" when its resolution would affect the outcome of the case. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Porter, 266 B.R. 367.—Bankr 2164.1; Fed Civ Proc 2470.1.

Bkrcty.N.D.Ohio 1999. Fact issue is "material," for summary judgment purposes, if it must be decided in order to resolve substantive claim or defense to which summary judgment motion is direct-

ed. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Glazer, 239 B.R. 352.—Fed Civ Proc 2470.1.

Bkrtcy.N.D.Ohio 1995. Fact is “material,” for summary judgment purposes, if it could affect outcome of lawsuit under applicable substantive law. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Mellott, 187 B.R. 578.—Bankr 2164.1; Fed Civ Proc 2470.1.

Bkrtcy.N.D.Ohio 1994. Chapter 7 debtor’s omission of guns and accessories from schedules was “material,” for denial of discharge purposes, even though dollar value of guns and accessories did not appear to have been substantial; creditors were entitled to judge for themselves what would benefit, and what would prejudice, them. Bankr. Code, 11 U.S.C.A. § 727(a)(4).—In re Parsell, 172 B.R. 226.—Bankr 3284.

Bkrtcy.N.D.Ohio 1989. Subject matter of false oath is “material,” within meaning of “false oath” exception to discharge, if it bears some relationship to debtor’s business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of debtor’s property. Bankr. Code, 11 U.S.C.A. § 727(a)(4).—In re Bluestone, 102 B.R. 103.—Bankr 3282.1.

Bkrtcy.N.D.Okla. 2002. Subject matter of a false oath is “material,” and thus sufficient to bar discharge, if it bears a relationship to debtor’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re King, 272 B.R. 281.—Bankr 3282.1.

Bkrtcy.D.Or. 1993. Value of omitted assets need not be significant to be “material” for purposes of obtaining denial of discharge based on false oath, and detriment to creditors need not be shown; materiality may be present if omitted assets are relevant to discovery of past transactions. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Ford, 159 B.R. 590.—Bankr 3284.

Bkrtcy.E.D.Pa. 1996. Factual dispute is “material,” for summary judgment purposes, if it might affect outcome of action under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Pennsylvania Footwear Corp., 199 B.R. 534.—Fed Civ Proc 2470.1.

Bkrtcy.E.D.Pa. 1996. False oath or statement is “material,” within meaning of statutory exception to grant of debtor’s discharge, if it concerns discovery of assets, business transactions, or past business dealings of debtor or existence or disposition of debtor’s property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Segal, 195 B.R. 325.—Bankr 3282.1.

Bkrtcy.E.D.Pa. 1993. Fact is “material,” for summary judgment purposes, if it would affect outcome of suit as determined by substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re H.R. Hindle & Co., Inc., 149 B.R. 775.—Fed Civ Proc 2470.1.

Bkrtcy.E.D.Pa. 1991. Debtor’s false oath or statement is considered “material” to course of bankruptcy case, within meaning of “false oath” exception to discharge, if it concerns discovery of assets, business transactions, and/or past business dealings of debtor or existence or disposition of debtor’s property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Henderson, 134 B.R. 147.—Bankr 3282.1, 3283.

Bkrtcy.W.D.Pa. 2002. An untruth is “material” for purposes of fraud discharge exception if it is important enough to influence a creditor’s decision to extend credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Barnette, 281 B.R. 869.—Bankr 3353(1).

Bkrtcy.W.D.Pa. 2001. An untruth is “material,” for purposes of discharge exception for debts obtained through false pretenses, false representation, or actual fraud, if it is considered important enough to influence a creditor’s decision to extend credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Bruce, 262 B.R. 632.—Bankr 3353(1).

Bkrtcy.D.R.I. 1989. Baker’s alleged misrepresentations to franchisees inexperienced in baking trade, regarding assistance that he would furnish and quality of baked goods he would supply, were clearly misrepresentations of “material” fact, inasmuch as franchisees relied thereon in entering into franchise agreement.—In re DeRosa, 103 B.R. 382.—Fraud 18.

Bkrtcy.D.S.C. 2001. Debtor’s false statement relates to “material” matter, as required under “false oath” discharge exception, when it bears a relationship to existence and disposition of debtor’s property. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Hooper, 274 B.R. 210.—Bankr 3282.1.

Bkrtcy.D.S.C. 2001. Chapter 7 debtors’ false oaths on their bankruptcy schedules and statement of affairs, including their failure to disclose debtor-wife’s previous married name, failure to disclose their income over three-year span and failure to disclose payments that they made to their father(-in-law) just one month prepetition, related to “material” matter and warranted denial of debtors’ discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Hooper, 274 B.R. 210.—Bankr 3284.

Bkrtcy.E.D.Tenn. 2003. Statements bearing a relationship to debtor’s business transactions or estate, or concerning discovery of assets, business dealings, or existence and disposition of property, are “material,” for purposes of “false oath” discharge exception. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Heil, 289 B.R. 897.—Bankr 3282.1.

Bkrtcy.E.D.Tenn. 2003. Statement or omission is “material,” for purposes of “false oath” discharge exception, if it hinders administration of bankruptcy estate. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Heil, 289 B.R. 897.—Bankr 3282.1.

Bkrtcy.M.D.Tenn. 1998. Chapter 7 debtor’s false representations in financial statement submitted to bank, that he was the sole owner of real

property and certificates of deposit (CDs) that he owned jointly with his wife, constituted "material" falsehoods, for debt dischargeability purposes. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Sansom, 224 B.R. 49.—Bankr 3353(12.15).

Bkrty.N.D.Tex. 2001. Creditor's actual subjective reliance on debtor's false financial statement is not, by itself, dispositive of whether these falsehoods are "material," for dischargeability purposes; financial statement may be "materially false" though creditor did not rely on it. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Slonaker, 269 B.R. 595.—Bankr 3353(12.15), 3353(14).

Bkrty.N.D.Tex. 2001. Whether omission from debtor's schedules is "material," as required to deny debtor's discharge based upon his false oath, is not merely a function of value of omitted assets, or of whether omission was detrimental to creditors; subject matter of false oath is "material," and thus sufficient to bar debtor's discharge, if it bears relationship to debtor's business transactions or estate, or concerns discovery of debtor's assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re DeVoll, 266 B.R. 81.—Bankr 3282.1.

Bkrty.N.D.Tex. 1992. Fact is considered "material," for summary judgment purposes, only if it might affect outcome of suit under governing law.—In re Williams, 152 B.R. 123.—Fed Civ Proc 2470.1.

Bkrty.E.D.Va. 1997. For false representation to be "material," as required by "false pretenses" exception to discharge, representation must be such that reasonable man would attach importance to fact misrepresented in determining his choice of action. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Hanes, 214 B.R. 786.—Bankr 3353(1.40).

Bkrty.E.D.Va. 1996. Chapter 7 debtors' omission from rental application of two pending loan applications was "material" to landlord within meaning of discharge exception for debt for property obtained by materially false financial statement; there was no evidence that debtors were the least bit doubtful of their ability to obtain the loans and, had omitted loans been included in application along with other omitted debts, ratio of debtors' required monthly payments to their gross monthly income would have equated to 32% debt burden before rent, above the level which landlord found acceptable, and thus there was significant likelihood that he would not have agreed to rent to debtors. Bankr.Code, 11 U.S.C.A. § 523(a)(2).—In re Brevard, 200 B.R. 836.—Bankr 3353(12.15).

Bkrty.E.D.Va. 1995. For purposes of Chapter 7 discharge denial, subject matter of false oath is "material," and thus, sufficient to bar discharge, if it bears relationship to debtor's business transactions or estate, concerns discovery of assets or business dealings, or concerns existence and disposition of property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re McFarland, 197 B.R. 222.—Bankr 3282.1.

Bkrty.E.D.Va. 1991. To warrant denial of discharge, subject of false oath must relate to "material" matter, i.e., to matter which bears relationship to debtor's business transactions or estates, or concerns discovery of assets, business dealings, or existence and disposition of debtor's property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Farouki, 133 B.R. 769, subsequently affirmed *Farouki v. Emirates Bank Intern., Ltd.*, 14 F.3d 244.—Bankr 3282.1.

Bkrty.E.D.Va. 1980. Omission of an irrelevant matter or of property having no value is not necessarily fatal to a debtor's receiving a discharge in bankruptcy; however, a matter subject of a false oath is "material" if pertinent to the discovery of assets, including history of bankrupt's financial transactions. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Scales, 8 B.R. 110.—Bankr 3284.

Bkrty.E.D.Va. 1979. Determining whether particular fact is "material" within meaning of anti-fraud section of Securities Exchange Act and rule promulgated pursuant thereto cannot be made in a vacuum, but, rather, each case must be viewed as a discreet set of circumstances and judged on its own unique facts. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Matter of Rahm, 1 B.R. 631.—Sec Reg 60.28(11).

Bkrty.W.D.Va. 1984. For purposes of summary judgment, "material" facts are those which, by their nature, tend to prove or disprove elements of disputed claim for relief. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Combs, 40 B.R. 148, appeal decided *Combs v. Richardson*, 838 F.2d 112.—Fed Civ Proc 2470.1.

Bkrty.E.D.Wis. 1988. Debtor's intentional overstatement by at least seven percent of total net worth claimed on financial statements submitted to bank constituted "material" misrepresentation in writing, such as would render debtor's obligation to bank nondischargeable in bankruptcy. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—Matter of Meyer, 89 B.R. 25.—Bankr 3353(12.15).

CIT 1993. Evidence is "material" and may be presented to Court of International Trade if there is reasonable possibility that it would change outcome of determination by Secretary of Treasury. Tariff Act of 1930, § 641(e)(4), as amended, 19 U.S.C.A. § 1641(e)(4).—*Bell v. U.S.*, 839 F.Supp. 874.—Cust Dut 84(7).

Fed.Cl. 1996. For summary judgment purposes, not all factual issues are "material"; only those that may be dispositive are deemed "material" and, therefore, may preclude summary judgment. RCFC, Rule 56(c), 28 U.S.C.A.—*Barseback Kraft AB v. U. S.*, 36 Fed.Cl. 691, affirmed 121 F.3d 1475.—Fed Cts 1120.

Fed.Cl. 1996. For purpose of rule that summary judgment is appropriate when there are no genuine issues of material fact and moving party is entitled to judgment as a matter of law, fact is "material" if it might significantly affect outcome of suit under governing law. RCFC, Rule 56(c), 28 U.S.C.A.—

Bear Claw Tribe, Inc. v. U.S., 36 Fed.Cl. 181, affirmed 37 Fed.Cl. 633.—Fed Cts 1120.

Fed.Cl. 1996. Fact is considered “material,” on motion for summary judgment, if it might significantly affect outcome of suit under governing law. RCFC, Rule 56, 28 U.S.C.A.—Brown v. U.S., 35 Fed.Cl. 258, appeal dismissed 92 F.3d 1206, order recalled and vacated 95 F.3d 1163, appeal reinstated 95 F.3d 1163, affirmed 105 F.3d 621, rehearing denied.—Fed Cts 1120.

Fed.Cl. 1995. Fact is considered “material,” for summary judgment purposes in Court of Federal Claims, if it might significantly affect outcome of suit under governing law. RCFC, Rule 56, 28 U.S.C.A.—Advanced Distribution System, Inc. v. U.S., 34 Fed.Cl. 598.—Fed Cts 1120.

Fed.Cl. 1995. Only legally significant facts, i.e., those that would change outcome of litigation, are deemed “material” so as to preclude summary judgment. RCFC, Rule 56, 28 U.S.C.A.—Rockefeller Center Properties v. U.S., 32 Fed.Cl. 586.—Fed Cts 1120.

Fed.Cl. 1994. United States Army Missile Command, by accepting over 600 TOW Missile Vehicle Power Conditioners (TVCP) built by contractor for use in field, relied on representations implicit in invoices that TVCP units, in fact, met contract specifications, and thus, contractor’s misrepresentations were “material,” for purposes of default termination.—Daff v. U.S., 31 Fed.Cl. 682, affirmed 78 F.3d 1566, rehearing denied, in banc suggestion declined.—U S 72.1(2).

Fed.Cl. 1993. Fact is “material,” for summary judgment purposes, if it might significantly affect outcome of suit under governing law.—North Star Alaska Housing Corp. v. U.S., 30 Fed.Cl. 259.—Fed Cts 1120.

Fed.Cl. 1993. Substantive law identifies facts that are “material,” for purposes of summary judgment. RCFC, Rule 56(c), 28 U.S.C.A.—Brown v. U.S., 30 Fed.Cl. 23, reversed 73 F.3d 1100.—Fed Cts 1120.

Fed.Cl. 1993. Fact becomes “material” for purposes of summary judgment when it could make a difference in outcome of case.—Petway v. U.S., 28 Fed.Cl. 711.—Fed Cts 1120.

Fed.Cl. 1992. Fact is “material” for summary judgment purposes if it might significantly affect outcome of suit under governing law. U.S.Ct.Cl. Rule 56(c), 28 U.S.C.A.—Meade v. U.S., 27 Fed.Cl. 367, affirmed 5 F.3d 1503, rehearing denied.—Fed Civ Proc 2470.1.

Cl.Ct. 1983. A fact issue is “material” for summary judgment, only if the facts alleged are such as to constitute a legal defense or are of such a nature so as to affect the results and where a fact issue is not relevant to resolution of a controlling legal issue it is not “material” so as to preclude summary judgment.—Laningham v. U.S., 2 Cl.Ct. 535.—Fed Cts 1120.

Ala. 1994. Question of whether requisite wrongfulness was proved by clear and convincing evidence

to authorize trier of fact to award punitive damages is not “material,” for purposes of summary judgment, to any element of a claim. Rules Civ.Proc., Rule 56; Code 1975, § 6–11–20.—Hines v. Riverside Chevrolet-Olds, Inc., 655 So.2d 909, rehearing denied.—Judgm 185(5).

Ala. 1994. Building was not “material” within exclusion from liability policy for loss resulting from materials containing asbestos, and policy thus provided coverage for injury caused by asbestos used in construction of insured’s building.—Essex Ins. Co. v. Avondale Mills, Inc., 639 So.2d 1339.—Insurance 2278(21).

Ala. 1987. Developer’s misrepresentation and concealment regarding time by which it would complete construction of boat docks was “material” to townhouse purchasers, for purpose of purchasers’ fraud claims, where each purchaser testified that he would not have closed sale had developer disclosed actual impediments to construction of docks.—Deupree v. Ruffino, 505 So.2d 1218.—Fraud 18.

Ala. 1982. Where two boilers were purchased by producer of rayon staple fiber to supply required steam for pollution control facilities required by state and federal directives the fuel oil used in firing those boilers was a “material” within meaning of sales and use tax exemptions for material for use in a device or facility acquired primarily for pollution control purposes, notwithstanding that steam generated by those boilers was channeled into a common pipeline serving the entire facility. Code 1975, §§ 11–54–88(c)(2), 40–23–4, 40–23–4(16), 40–23–62, 40–23–62(18).—Eagerton v. Courtaulds North America, Inc., 421 So.2d 104.—Tax 1244.1.

Ala. 1980. Under venue rule, providing that actions against resident individuals must be brought in county where any material defendant resides at commencement of the action, there is no requirement that a plaintiff be successful in his quest for relief against defendant for that defendant to be “material,” and thus dismissal from lawsuit of defendant as to whom venue was originally proper will not render venue improper as to remaining defendants. Rules of Civil Procedure, Rules 82(b)(1)(A), (c), 82 comment.—Ex parte Maness, 386 So.2d 429.—Venue 22(5).

Ala. 1969. To be “material” within rule that, in order to work discharge of surety, alteration of contract must be material, the alteration must change some new obligation or take away some obligation originally imposed, thereby placing surety in different position from one occupied before change was made.—United Bonding Ins. Co. v. W. S. Newell, Inc., 232 So.2d 616, 285 Ala. 371.—Princ & S 101(2).

Ala. 1941. Where motorist was charged with operating a motor vehicle while intoxicated, his testimony that he was not driving the motor vehicle was “material” and could furnish basis for charge of perjury though motorist was acquitted, since materiality must be determined in light of conditions at time testimony is given, and in any case acquittal did not necessarily represent a finding that motorist was not intoxicated so as to render immaterial

inquiry whether he was driving.—*Wright v. State*, 3 So.2d 326, 241 Ala. 529.—Perj 11(2).

Ala.Crim.App. 2000. In the *Brady* context, evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Wynn v. State*, 804 So.2d 1122, opinion after remand, and rehearing denied, certiorari denied Ex parte Wynn, 804 So.2d 1152, certiorari denied 122 S.Ct. 1440, 535 U.S. 972, 152 L.Ed.2d 383.—Crim Law 700(2.1).

Ala.Crim.App. 2000. “Material” element of test for determining whether *Brady* violation has occurred is satisfied only if there is a reasonable probability that, had the evidence been disclosed to the defense, result of proceeding would have been different, with a “reasonable probability” being a probability sufficient to undermine confidence in the outcome.—*Williams v. State*, 782 So.2d 811, rehearing denied, certiorari denied Ex parte Williams, 782 So.2d 842.—Crim Law 700(2.1).

Ala.Crim.App. 1995. Prior testimony is “material,” for purposes of perjury prosecution, regardless of admissibility of statement under rules of evidence, if it could have affected course or outcome of the official proceedings, and it is no defense that declarant mistakenly believed the falsification to be immaterial. Code 1975, §§ 13A–10–100(b)(2), 13A–10–101(a).—*Fort v. State*, 668 So.2d 888, rehearing denied, and certiorari denied.—Perj 11(8), 15.

Ala.App. 1960. To be “material”, a variance as to the name alleged in the indictment from that proved by evidence must be such as to be misleading or substantially injurious to accused in making his defense or expose him to the danger of a second trial on same charge.—*Helms v. State*, 121 So.2d 104, 40 Ala.App. 622, certiorari denied 121 So.2d 106, 270 Ala. 603.—Ind & Inf 180.

Ala.App. 1941. Testimony of witness in murder prosecution who stated that he was present at time of shooting and related what he saw and heard take place at that time, was “material” upon that trial, and hence if the statements were willfully and corruptly false, the witness was guilty of “perjury”. Code 1923, § 5159.—*Knight v. State*, 1 So.2d 668, 30 Ala.App. 97, certiorari denied 1 So.2d 669, 241 Ala. 152.—Perj 11(2).

Alaska 2001. A misrepresentation in a proxy solicitation is “material” if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. AS 45.55.160; Alaska Admin. Code title 3, § 08.315(a).—*Meidinger v. Koniag, Inc.*, 31 P.3d 77, rehearing denied.—Sec Reg 278.

Alaska 2001. Misrepresentations in proxy solicitation by shareholders of Alaska Native regional corporation, that adoption of proposal to establish a permanent fund as a settlement trust would give corporation’s board the ‘authority to change the terms of the trust and the number of trustees as they see fit’ and would grant ‘irrevocable delegation from the shareholders to the current board to

appoint or remove trustees,’ were “material,” as element of securities fraud for making materially false or misleading proxy solicitation statements; the misrepresentations pertained to merits of the only proposition scheduled to be considered at corporation’s annual meeting. AS 45.55.160; Alaska Admin. Code title 3, § 08.315(a).—*Meidinger v. Koniag, Inc.*, 31 P.3d 77, rehearing denied.—Sec Reg 278.

Alaska 1998. Existence of a disputed factual issue will only preclude summary judgment if it is a material issue; factual issue will not be considered “material” if, even assuming the factual situation to be as the non-moving party contends, he or she would still not have a factual basis for a claim for relief against the moving party.—*Sonneman v. State*, 969 P.2d 632.—Judgm 181(2).

Alaska 1996. Requirement that bids for public contracts be responsive promotes honest competition and requires bid solicitor to reject bids which vary materially from specifications set forth in publicized request for proposal; variance is “material” for these purposes if it gives bidder substantial advantage over competitors. Alaska Admin. Code title 4, § 27.085(e)(2, 3).—*Lower Kuskokwim School Dist. v. Foundation Services, Inc.*, 909 P.2d 1383.—Pub Contr 8.

Alaska 1980. Incidents of guest of tenant’s children accidentally discharging rifle in tenant’s trailer, resulting in bullet passing through trailer next door, and of stolen property of other mobile home park tenants being discovered by police in tenant’s trailer directly and seriously threatened safety either of persons or of property in trailer park, and, therefore, disturbed peace and harmony of neighborhood to degree and in manner that was “material,” and not “remediable,” under statute permitting termination of tenancy for noncompliance with rental agreement, justifying eviction of tenant from trailer park space occupied on month-to-month tenancy under rental agreement holding tenants responsible for conduct of their children and guests and prohibiting unnecessary disturbances. AS 34.03.220(a).—*Osness v. Dimond Estates, Inc.*, 615 P.2d 605.—Land & Ten 116(4), 389.

Alaska 1980. The term “material” within provision of speedy trial rule excluding periods of delay resulting from “unavailability of evidence material to the state’s case” means something that is important or necessary to the prosecution’s case. Rules of Criminal Procedure, rules 45, 45(d).—*Mullins v. State*, 608 P.2d 764.—Crim Law 577.10(7).

Alaska 1973. While a “material” variance from invitation requires rejection of proposal for public contract, a “minor” variance does not require rejection of the proposal; a variance is said to be “material” if it gives the bidder a substantial advantage over other bidders, and thereby restricts or stifles competition.—*King v. Alaska State Housing Authority*, 512 P.2d 887, appeal after remand 571 P.2d 1010, appeal after remand 633 P.2d 256.—Pub Contr 10.

Alaska App. 1999. On appeal involving plea agreement, the question of whether a breach is

“material”—that is, whether the breach destroys the basic value of the agreement and excuses the non-offending party from further adherence to the terms of the agreement—is ultimately a question of law, to be decided by reviewing court de novo.—*Dutton v. State*, 970 P.2d 925.—Crim Law 1139.

Alaska App. 1993. State’s failure to meet burden of proving that misstatement or omission in information presented in support of search warrant was neither reckless nor intentional will vitiate warrant if misstatement or omission is “material,” that is, if deletion of the misstated information from or inclusion of the omitted information in original affidavit would have precluded finding of probable cause.—*Lewis v. State*, 862 P.2d 181.—Searches 112.

Alaska App. 1989. Defendant’s failure to testify before grand jury constituted “material” breach of immunity agreement, despite State’s ability to secure indictment in defendant’s absence.—*Closson v. State*, 784 P.2d 661, reversed 812 P.2d 966.—Crim Law 42.

Ariz. 1953. Where agent proposes to act adversely to principal’s interest, agent must communicate to principal all material facts in connection with transaction, and such fact is “material” when it is one which agent should realize would be likely to affect the judgment of the principal in giving or withholding consent to agent’s entering into the transaction.—*Patrick v. Cochise Hotels, Inc.*, 259 P.2d 569, 76 Ariz. 136.—Princ & A 69(1).

Ariz. 1951. Under rule providing that motion for summary judgment should not be granted where there is genuine issue of any “material” fact, issue is “material” if facts alleged are such as to constitute a legal defense or are of such nature as to affect result of action. 16 A.R.S. Rules of Civil Procedure, rule 56.—*Northen v. Elledge*, 232 P.2d 111, 72 Ariz. 166.—Judgm 181(2).

Ariz. 1912. To justify a reversal of a conviction on the ground of error, the error must have been of a material character, and must have deprived accused of a substantial right, the word “material” meaning something of weighty character, substantial, of consequence, not to be dispensed with.—*Campbell v. Territory*, 125 P. 717, 14 Ariz. 109.

Ariz.App. Div. 2 1990. For purposes of allowing insurer to rescind insurance policy if insured misrepresents material fact, fact is “material” if it might have influenced reasonable insurer in deciding whether to accept or reject risk.—*CenTrust Mortg. Corp. v. PMI Mortg. Ins. Co.*, 800 P.2d 37, 166 Ariz. 50.—Insurance 2958.

Ark. 1998. Police investigator in drug case was “material” for purposes of criminal procedure rule allowing trial court to exclude from its speedy trial computation the time when evidence material to prosecution is unavailable to state, where investigator was case agent, lead officer, custodian of records, supervisor of the buy money, supervisor of evidence, and state’s first witness at trial in which he testified extensively about his role as undercover agent on cases involving defendant and helped in-

troduce six state exhibits. Rules Crim.Proc., Rule 28.3(d)(1).—*Strickland v. State*, 962 S.W.2d 769, 331 Ark. 402.—Crim Law 577.10(6).

Ark. 1993. Under Arkansas law, “material” alteration in obligation, made without assent of guarantor, may discharge guarantor; alteration is not “material” unless guarantor is placed in position of being required to do more than his original undertaking.—*Smith v. Elder*, 849 S.W.2d 513, 312 Ark. 384.—Guar 53(1).

Ark. 1984. Misstatement or nondisclosure of facts in sales transaction must be such that reasonable person would consider it important in making decision before it is “material.”—*C & C Elec. Const. Co., Inc. v. Rogers*, 663 S.W.2d 707, 281 Ark. 178.—Sales 38(9).

Ark. 1983. An alteration of a performance bond contract is not “material” unless the surety is placed in the position of doing more than the undertaking contained in the performance bond.—*Carroll-Boone Water Dist. v. M. & P. Equipment Co.*, 661 S.W.2d 345, 280 Ark. 560.—Princ & S 101(2).

Ark. 1953. Newly discovered evidence, in order to be “material,” so as to justify new trial, must go to the merits of the case.—*Sellers v. Harvey*, 263 S.W.2d 86, 222 Ark. 804.—New Tr 103.

Ark. 1935. Under statute authorizing new trial for newly discovered material evidence, newly discovered evidence to be “material” must not be merely cumulative or impeaching in character, and it must have been discovered after the trial and be such that it would probably have changed the result had it been offered at trial. *Crawford & Moses’ Dig.* § 1311, subd. 7; § 1316.—*Arkansas Power & Light Co. v. Mason*, 87 S.W.2d 988, 191 Ark. 804.—New Tr 99.

Ark.App. 2001. Alteration of a guaranty agreement is not “material,” as basis for discharging the guarantor, unless the guarantor is placed in the position of being required to do more than his original undertaking.—*B.S.G. Foods, Inc. v. Multi-foods Distribution Group, Inc.*, 54 S.W.3d 553, 75 Ark.App. 30.—Guar 54.

Ark.App. 1985. An alteration of a guaranty agreement is not “material” unless guarantor is placed in position of being required to do more than his original undertaking.—*Vogel v. Simmons First Nat. Bank of Pine Bluff*, 689 S.W.2d 576, 15 Ark.App. 69.—Guar 53(1).

Cal. 2002. Evidence is “material” under the *Brady* standard if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*City of Los Angeles v. Superior Court*, 52 P.3d 129, 124 Cal.Rptr.2d 202, 29 Cal.4th 1.—Crim Law 700(2.1).

Cal. 2000. Even assuming the record was undisputed that before FBI agent testified at hearing on admissibility of agent’s rebuttal testimony at capital murder trial, witness had told the prosecutor personally that FBI agent’s report inaccurately stated

that the witness had told the agent that defendant was obsessed with killing, and especially with killing women, the witness' statement to the prosecutor was not "material" and the prosecutor therefore was not required to disclose it, where the witness did not testify at trial that defendant had such an obsession, and his denial that he had made such a statement therefore could not have been used to impeach the witness.—*People v. Coddington*, 2 P.3d 1081, 97 Cal.Rptr.2d 528, 23 Cal.4th 529, as modified on denial of rehearing, certiorari denied *Coddington v. California*, 121 S.Ct. 1199, 531 U.S. 1195, 149 L.Ed.2d 113.—Crim Law 700(4).

Cal. 2000. In assessing a claim made on appeal that the prosecution failed to reveal material evidence, favorable evidence is considered "material" only if it is reasonably probable that disclosure would have affected the result.—*People v. Coddington*, 2 P.3d 1081, 97 Cal.Rptr.2d 528, 23 Cal.4th 529, as modified on denial of rehearing, certiorari denied *Coddington v. California*, 121 S.Ct. 1199, 531 U.S. 1195, 149 L.Ed.2d 113.—Crim Law 700(2.1).

Cal. 1999. For purposes of prosecution's duty under Due Process Clause to disclose favorable, material evidence to criminal defendant, evidence is "favorable" if it hurts the prosecution or helps the defense and is "material" only if there is a reasonable probability that, had it been disclosed to the defense, the result would have been different. U.S.C.A. Const.Amend. 14.—*People v. Earp*, 978 P.2d 15, 85 Cal.Rptr.2d 857, 20 Cal.4th 826, rehearing denied, certiorari denied *Earp v. California*, 120 S.Ct. 1272, 529 U.S. 1005, 146 L.Ed.2d 221.—Const Law 268(5).

Cal. 1997. Testimony is "material" within meaning of statute requiring disqualification of judge, if person within third degree of relationship to judge is likely to be material witness in proceeding, only if it is important, more or less necessary, going to the merits or if it has some likelihood of affecting outcome of case. West's Ann.Cal.C.C.P. § 170.1(a)(1).—*People v. Williams*, 941 P.2d 752, 66 Cal.Rptr.2d 573, 16 Cal.4th 635, rehearing denied, certiorari denied *Williams v. California*, 118 S.Ct. 1314, 523 U.S. 1027, 140 L.Ed.2d 478.—Judges 45.

Cal. 1997. Omissions in search warrant affidavit are "material" if affidavit was rendered substantially misleading, i.e., if there was a substantial possibility omitted facts would have altered reasonable magistrate's probable cause determination.—*People v. Carpenter*, 935 P.2d 708, 63 Cal.Rptr.2d 1, 15 Cal.4th 312, rehearing denied, certiorari denied *Carpenter v. California*, 118 S.Ct. 858, 522 U.S. 1078, 139 L.Ed.2d 757.—Searches 112.

Cal. 1995. Evidence is "material" for purposes of prosecutor's due process duty to disclose only if there is reasonable probability that, had it been disclosed to defense, result of trial would have been different. U.S.C.A. Const.Amend. 14.—*In re Sasounian*, 887 P.2d 527, 37 Cal.Rptr.2d 446, 9 Cal.4th 535.—Const Law 268(5).

Cal. 1985. When search warrant is attacked on ground that it is incomplete, reviewing court must determine whether any of asserted omissions were material; omissions are "material" if affidavit was rendered substantially misleading, i.e., if there was a substantial possibility that omitted facts would have altered a reasonable magistrate's probable cause determination.—*People v. Aston*, 703 P.2d 111, 216 Cal.Rptr. 771, 39 Cal.3d 481.—Searches 112, 200.

Cal. 1980. Evidence lost to the defense because of its destruction by the authorities will be deemed "material" for purpose of triggering due process concerns of *Hitch* if there is a reasonable possibility that it would be favorable to the defendant on the issue of guilt or innocence. U.S.C.A. Const. Amend. 14.—*People v. Nation*, 604 P.2d 1051, 161 Cal.Rptr. 299, 26 Cal.3d 169.—Const Law 268(5).

Cal.App. 1 Dist. 2000. Evidence is "material," in the context of *Brady* disclosure requirements, if, had it been disclosed, there is a reasonable probability that the outcome of the trial would have been different.—*People v. Garcia*, 100 Cal.Rptr.2d 789, 84 Cal.App.4th 316, rehearing denied.—Crim Law 700(2.1).

Cal.App. 1 Dist. 2000. Possibility that information might have been helpful to the defense does not make it "material" for *Brady* purposes.—*People v. Garcia*, 100 Cal.Rptr.2d 789, 84 Cal.App.4th 316, rehearing denied.—Crim Law 700(2.1).

Cal.App. 1 Dist. 2000. "Material," for purposes of exclusion from coverage under personal and advertising injury liability provisions of general liability insurance policy, for any personal or advertising injury which arose out of a oral or written publication of material whose first publication took place before the beginning of the policy period, was any provably false and defamatory idea, claim, charge, assertion, contention, accusation, or allegation of fact, that was stated either orally or in writing.—*Ringler Associates Inc. v. Maryland Cas. Co.*, 96 Cal.Rptr.2d 136, 80 Cal.App.4th 1165, rehearing denied.—Insurance 2303(3), 2313(3).

Cal.App. 1 Dist. 1999. For practical purposes, an issue of "material" fact precluding summary judgment is one which, in the context and circumstances of the case, warrants the time and cost of factfinding by trial. West's Ann.Cal.C.C.P. § 437c(c).—*Eisenberg v. Alameda Newspapers, Inc.*, 88 Cal.Rptr.2d 802, 74 Cal.App.4th 1359, rehearing denied, and review denied.—Judgm 181(2).

Cal.App. 1 Dist. 1997. "Material" has specialized meaning within context of perjury charge, which may be based only on material statement; test is whether statement or testimony might have been used to affect proceeding in or for which it was made or whether statement could probably have influenced outcome of proceeding. West's Ann.Cal.Penal Code § 118; CALJIC 7.21.—*People v. Feinberg*, 60 Cal.Rptr.2d 323, 51 Cal.App.4th 1566, as modified.—Perj 11(2).

Cal.App. 1 Dist. 1991. Undisclosed facts are "material" to sale of real property, for purpose of

negligent nondisclosure claim, if they have significant and measurable effect on property's market value.—*Karoutas v. HomeFed Bank*, 283 Cal.Rptr. 809, 232 Cal.App.3d 767, review denied.—*Fraud* 18.

Cal.App. 1 Dist. 1991. Insured's misrepresentation on application for life insurance as to whether she had smoked any cigarettes in 12 months preceding application was "material," and allowed insurer to rescind policy, even though misrepresentation would not have affected insurer's decision to insure, but would only have affected premium charged for insurance. *West's Ann.Cal.Ins.Code* §§ 331, 334, 359.—*Old Line Life Ins. Co. v. Superior Court*, 281 Cal.Rptr. 15, 229 Cal.App.3d 1600, review denied.—*Insurance* 3019.

Cal.App. 1 Dist. 1968. A variance between indictment and proof is not "material" unless it is of such substantive character as to mislead defendant in preparing defense or unless it is likely to place him in danger of double jeopardy. *West's Ann. Pen.Code*, § 960.—*People v. Katzman*, 66 Cal.Rptr. 319, 258 Cal.App.2d 777.—*Ind & Inf* 171.

Cal.App. 1 Dist. 1954. Where action for personal injuries was based upon theory of breach of express warranty that detergent was kind to hands, it was "material," within statutes providing for order for inspection and subpoena duces tecum, to show by affidavits, defendant's knowledge that others were harmed by the product. *Code Civ.Proc.* §§ 1000, 1985.—*Proctor & Gamble Mfg. Co. v. Superior Court of State, In and For Marin County*, 268 P.2d 199, 124 Cal.App.2d 157.—*Pretrial Proc* 407.

Cal.App. 1 Dist. 1933. Under liberal construction of statute providing lien for person furnishing "material" for improvements, word "material" would be sufficiently broad to include supplies of all sorts or kinds (St.1911, p. 738, § 19, as amended by St.1929, p. 1655, § 3).—*Garbutt v. Chappe*, 21 P.2d 594, 131 Cal.App. 284.—*Mun Corp* 373(2).

Cal.App. 2 Dist. 1996. On motion for summary judgment, materiality depends upon issues in case; evidence which does not relate to matter in issue is not "material."—*Monastra v. Konica Business Machines, U.S.A., Inc.*, 51 Cal.Rptr.2d 528, 43 Cal. App.4th 1628.—*Judgm* 181(2).

Cal.App. 2 Dist. 1988. In order to prevent imposition of summary judgment, disputed facts must be "material," that is, relate to claim or defense in issue which could make difference in the outcome. *West's Ann.Cal.C.C.P.* § 437c(c).—*Burton v. Security Pacific Nat. Bank*, 243 Cal.Rptr. 277, 197 Cal. App.3d 972.—*Judgm* 181(2).

Cal.App. 2 Dist. 1987. "Informant" is not a "material witness" nor does his nondisclosure deny defendant a fair trial, within statute setting standards for disclosure of identity of "confidential informant," where the informant's testimony, though "material" on the issue of guilt, would only further implicate rather than exonerate defendant. *West's Ann.Cal.Evid.Code* § 1042(d).—*People v. Alderrou*, 236 Cal.Rptr. 740, 191 Cal.App.3d 1074.—*Crim Law* 627.10(1).

Cal.App. 2 Dist. 1984. While every falsehood makes affidavit in support of search warrant inaccurate, not all omissions do; affidavit need only disclose information, favorable and adverse, to enable magistrate to make reasonable, commonsense probable cause determination, and thus, affiant's duty of disclosure extends only to "material" adverse facts, i.e., those which, if omitted, would distort probable cause analysis. *U.S.C.A. Const.Amend.* 4; *West's Ann.Cal. Const. Art. 1, § 13*.—*People v. Sawkow*, 198 Cal.Rptr. 374, 150 Cal.App.3d 999, certiorari denied *Honore v. California*, 105 S.Ct. 528, 469 U.S. 1042, 83 L.Ed.2d 415.—*Searches* 112.

Cal.App. 3 Dist. 1994. Amendment of complaint is "material" opening default if it subjects defendant to increased damages.—*Ostling v. Loring*, 33 Cal.Rptr.2d 391, 27 Cal.App.4th 1731.—*Judgm* 150.

Cal.App. 3 Dist. 1994. Even collateral deception by police is "material," and may render defendant's confession "involuntary," if it is allied with matters amounting to false promise of leniency.—*People v. Cahill*, 28 Cal.Rptr.2d 1, 22 Cal.App.4th 296, rehearing denied, and review denied.—*Crim Law* 523.

Cal.App. 3 Dist. 1992. Evidence of subjective reasoning processes of jurors was not "material" to impeach verdicts, and so was not "relevant evidence" as defined by Evidence Code or as used in constitutional article providing that relevant evidence shall not be excluded in any criminal proceeding; Evidence Code section excludes evidence of subjective reasoning processes of jurors to impeach their verdicts, and the constitutional article does not purport to make immaterial or irrelevant evidence admissible in criminal cases. *West's Ann. Cal. Const. Art. 1, § 28(d)*; *West's Ann.Cal.Evid. Code* §§ 210, 1150(a).—*People v. Hill*, 4 Cal. Rptr.2d 258, 3 Cal.App.4th 16, rehearing denied, and review denied, denial of habeas corpus affirmed *Hill v. Ratelle*, 20 Fed.Appx. 665, certiorari denied 122 S.Ct. 2306, 535 U.S. 1102, 152 L.Ed.2d 1061.—*Crim Law* 338(1), 957(1).

Cal.App. 3 Dist. 1962. Statements made by man and woman under oath in hearing before referee of Social Welfare Board during proceeding on appeal from discontinuance of welfare aid to woman, that man was not father of woman's child and that man and woman were not living together as husband and wife, were directly in issue on question of entitlement to welfare aid, and were "material" within perjury statute. *West's Ann.Pen.Code*, § 118.—*People v. Grider*, 19 Cal.Rptr. 41, 200 Cal.App.2d 41.—*Perj* 11(2).

Cal.App. 4 Dist. 2000. Contractor's substandard work constituted a "material" failure to complete the project, in violation of the Business and Professions Code, even though the cost of repairs was substantially less than the contract price; there were 17 instances of substandard work, including significant instances of improper installation of sinks, showers, and toilets, unlevel floors, water leaks and the use of improper materials. *West's Ann.Cal. Bus. & Prof.Code* § 7113.—*Tellis v. Contractors'*

State License Bd., 93 Cal.Rptr.2d 734, 79 Cal.App.4th 153.—Cons Prot 6.

Cal.App. 4 Dist. 2000. Proportionality of the cost of repairs to the cost of a project is not determinative of whether substandard work constitutes a “material” failure, for purposes of the Business and Professions Code section proscribing material failure to complete a project; such a basis for determining materiality would mean that the larger the project, the more substandard work a contractor would be permitted to perform without sanction. West’s Ann.Cal.Bus. & Prof.Code § 7113.—*Tellis v. Contractors’ State License Bd.*, 93 Cal.Rptr.2d 734, 79 Cal.App.4th 153.—Cons Prot 6.

Cal.App. 4 Dist. 1998. Newly discovered evidence is “material” to movant’s case, so that discovery may warrant grant of new trial, if it is likely to produce a different result. West’s Ann.Cal.C.C.P. § 657(4).—*Sherman v. Kinetic Concepts, Inc.*, 79 Cal.Rptr.2d 641, 67 Cal.App.4th 1152, rehearing denied.—New Tr 103.

Cal.App. 4 Dist. 1997. For purposes of prosecution for making false or fraudulent statements to obtain workers’ compensation benefits, statements are “material” if the statements convey information on subjects which are “germane” or “reasonably relevant” to the insurer’s investigation and which could bear directly and importantly on the investigation and evaluation of the bona fides of the claim. West’s Ann.Cal.Ins.Code § 1871.4.—*People v. Gillard*, 66 Cal.Rptr.2d 790, 57 Cal.App.4th 136, review denied.—Work Comp 2080.

Cal.App. 4 Dist. 1993. Evidence is “material,” within meaning of rule requiring prosecutor to disclose substantial material evidence favorable to accused, if it would tend to influence trier of fact because of its logical connection with issue.—*People v. Garcia*, 22 Cal.Rptr.2d 545, 17 Cal.App.4th 1169, as modified on denial of rehearing, and review denied.—Crim Law 700(2.1).

Cal.App. 5 Dist. 1962. Riparian landowner could not file stop notice on basis that value of money realized in developing water supply, tortious damages to trees and bushes and fences, and water from river used by contractor in construction of flood control project on riparian owner’s land, constituted “material” furnished by landowner for construction of project. West’s Ann.Code Civ.Proc. §§ 1181, 1184.1, 1190.1.—*Fredericksen v. Harney*, 18 Cal.Rptr. 562, 199 Cal.App.2d 189.—Levees 15.

Cal.App. 6 Dist. 1993. Police officer’s surveillance location when he allegedly observed minor sell marijuana would not have been “material” on issue of minor’s guilt, and thus officer’s invocation of public employee’s privilege to refuse to disclose location did not require that trial court make fact finding adverse to government based on officer’s testimony, even though trial court determined that it was “absolutely essential” for minor to cross-examine officer to determine where he saw the observations; disclosure of officer’s exact location would not result in minor’s exoneration. West’s Ann.Cal.Evid.Code §§ 1040, 1042, 1042(a).—In re

Sergio M., 16 Cal.Rptr.2d 701, 13 Cal.App.4th 809, rehearing denied, and review denied.—Witn 216(1).

Cal.App. 6 Dist. 1992. False testimony in judicial or legislative proceeding is “material” within meaning of perjury statute if that testimony could probably have influenced the outcome of the proceeding. West’s Ann.Cal.Penal Code § 118.—*People v. Jimenez*, 15 Cal.Rptr.2d 268, 11 Cal.App.4th 1611, review denied.—Perj 11(2).

Colo. 1994. Information is “material,” and is of kind which must be disclosed by officer or director of closely held corporation when purchasing minority shareholder’s stock, if there is substantial likelihood that, under all of the circumstances, omitted fact would have assumed actual significance in deliberations of reasonable shareholder and would have been viewed by reasonable shareholder as having significantly altered the total mix of information made available.—*Van Schaack Holdings, Ltd. v. Van Schaack*, 867 P.2d 892.—Corp 316(3).

Colo. 1980. In order for a statement to be “material” to a grand jury investigation for purposes of the first-degree perjury statute, the testimony need not be “material” to the main issue, nor is it necessary that it be directed to the primary subject of the investigation. C.R.S. ’73, 18–8–501(1), 18–8–502.—*People v. Maestas*, 606 P.2d 849, 199 Colo. 143.—Perj 11(7).

Colo. 1980. Where purpose of grand jury was to investigate a heroin ring, not merely to investigate one member of the ring, and where the grand jury was also interested in identifying other members of the drug ring, testimony wherein grand jury witness denied meeting with a known member of the ring tended to impede and hamper the grand jury in its investigation and, therefore, the testimony was “material” within the meaning of the first-degree perjury statute. C.R.S. ’73, 18–8–501(1), 18–8–502.—*People v. Maestas*, 606 P.2d 849, 199 Colo. 143.—Perj 11(7).

Colo. 1980. Test for determining whether grand jury witness’ testimony was “material” to the grand jury investigation was whether, at the time the testimony was given, the testimony could have affected the course or outcome of the investigation. C.R.S. ’73, 18–8–501(1), 18–8–502.—*People v. Maestas*, 606 P.2d 849, 199 Colo. 143.—Perj 11(7).

Colo.App. 2002. To qualify for disclosure, exculpatory evidence must be material as measured by the following standard: evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Rules Crim.Proc., Rule 16, Part I(a)(2).—*People v. White*, 64 P.3d 864, rehearing denied, and certiorari denied.—Crim Law 700(2.1).

Colo.App. 2002. Misrepresented or omitted fact is considered “material,” for purpose of securities fraud claim, if there is substantial likelihood that reasonable investor would consider matter important in making investment decision. West’s C.R.S.A. § 11–51–501(1)(c).—*People v. Rivera*, 56 P.3d 1155, certiorari denied.—Sec Reg 278.

Colo.App. 2002. Information is “material,” for purposes of fraudulent nondisclosure, if considering specific factual circumstances involved, it would have assumed actual significance in deliberations of a reasonable shareholder or would have been considered by a reasonable investor as having significantly altered total mix of available information.—*Wisehart v. Zions Bancorporation*, 49 P.3d 1200.—*Fraud* 18.

Colo.App. 1999. Fact is “material” to an affidavit in support of a search warrant only if its omission rendered the affidavit substantially misleading to the judge who issued the search warrant.—*Feigin v. Digital Interactive Associates, Inc.*, 987 P.2d 876, rehearing denied, and certiorari denied.—*Searches* 112.

Colo.App. 1998. A fact is “material” to a closely held corporation’s minority shareholder, from whom officers or directors of the corporation seek to purchase shares, if there is a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of a reasonable shareholder and would have been viewed by a reasonable investor as having significantly altered the total mix of information available.—*Thorne v. Bauder*, 981 P.2d 662, rehearing denied, and certiorari denied.—*Corp* 316(3).

Colo.App. 1998. If appraisal information regarding the value of corporate stock is not reasonably current, if the appraiser considered only a portion of the assets that made up the value of the stock, or if the appraisal was made for a purpose other than determining the fair market value of corporate assets in the case of a sale, the appraisal information may be considered, as a matter of law, to be unreliable upon the question of the value of the corporate stock and its unreliability mandates that it not be considered “material” information.—*Thorne v. Bauder*, 981 P.2d 662, rehearing denied, and certiorari denied.—*Corp* 320(11.5).

Colo.App. 1998. Appraisal of closely held corporation’s capital stock, which majority shareholders failed to disclose to minority shareholder before majority shareholders purchased minority shareholder’s stock, was “material” information to the minority shareholder, for purposes of the fiduciary disclosure duties of majority shareholders.—*Thorne v. Bauder*, 981 P.2d 662, rehearing denied, and certiorari denied.—*Corp* 316(3).

Colo.App. 1996. Criminal defendant is entitled to have sanctions imposed against prosecution if his or her due process rights have been violated by prosecution’s failure to preserve material evidence; in this context, evidence is “material” if: it has exculpatory value that was apparent before evidence was lost or destroyed; and defendant would be unable to obtain comparable evidence through other available means. U.S.C.A. Const.Amend. 14.—*People v. Smith*, 926 P.2d 186.—*Crim Law* 700(9).

Colo.App. 1989. Constitutional error requiring reversal of conviction occurs from nondisclosure of evidence only if the evidence is material in the

sense that its suppression undermines confidence in the outcome of the trial; evidence is “material,” whether it was requested or not, and whether requested in a general or specific manner, only if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defendant.—*People v. Doss*, 782 P.2d 1198, certiorari denied.—*Crim Law* 1166(10.10).

Colo.App. 1985. For purposes of determining whether continuance was properly granted on basis of unavailability of material evidence intended to be presented by prosecution, testimony may be “material,” or “essential” to government’s case, even if government could convict without such testimony. C.R.S. 18–1–405(6)(g)(I).—*People v. Koolbeck*, 703 P.2d 673.—*Crim Law* 594(1).

Colo.App. 1977. Switch of drivers was material as to issue of defendant’s arrest in that arresting officer testified that he stopped truck after observing passenger and driver switch positions in moving vehicle and thus statement by defendant during in camera hearing that there had not been switch of drivers prior to arrest following prior hearing in which he admitted switching positions was “material” within meaning of statute defining materially false statement. C.R.S. ’73, 18–8–501(1).—*People v. Valdez*, 568 P.2d 71, 39 Colo.App. 213.—*Perj* 11(8).

Conn. 2000. Nondisclosed exculpatory evidence will be considered “material,” as used in *Brady* context, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*State v. Ortiz*, 747 A.2d 487, 252 Conn. 533.—*Crim Law* 700(2.1).

Conn. 2000. Potentially exculpatory police report suggesting third party culpability, which report State did not disclose prior to defendants’ probable cause hearings, was not “material” under *Brady*, where officer who signed report did not testify at hearing, there were no witnesses who testified at hearing who possibly could have been asked about contents of report, and had the defense made offer of proof based on third party culpability, such an offer would have been insufficient to rebut finding of probable cause, and the defense would not have been permitted to offer third party culpability evidence at the hearing. C.G.S.A. Const. Art. 1, § 8; C.G.S.A. § 54–46a.—*State v. Ortiz*, 747 A.2d 487, 252 Conn. 533.—*Crim Law* 700(3).

Conn. 1999. Allegedly exculpatory information consisting of prosecutor’s notes concerning his conversations with court-appointed psychiatric expert who evaluated capital defendant was not “material” as defined in *Brady* context, where information was available to defendant through other independent sources. U.S.C.A. Const.Amend. 5, 14.—*State v. Ross*, 742 A.2d 312, 251 Conn. 579.—*Crim Law* 700(3).

Conn. 1998. Mere possibility that an item of undisclosed evidence might have helped the defense or might have affected the outcome does not establish that evidence was “material,” for purposes

of *Brady* claim.—State v. Santiago, 715 A.2d 1, 245 Conn. 301, appeal after remand 748 A.2d 293, 252 Conn. 635.—Crim Law 700(2.1).

Conn. 1998. Nondisclosed statement of witness seen running from scene of shooting, as to clothing worn by shooter, was not “material” to murder defendant’s decision to waive probable cause hearing, and thus, State’s nondisclosure did not constitute *Brady* violation; discrepancies between witness’ description of clothing worn by shooter and description of defendant’s clothing by two other witnesses, while grist for cross-examination mill at trial, were insufficient to rebut State’s evidence. C.G.S.A. Const. Art. 1, § 8; C.G.S.A. §§ 53a–54a, 54–46a.—State v. Santiago, 715 A.2d 1, 245 Conn. 301, appeal after remand 748 A.2d 293, 252 Conn. 635.—Crim Law 700(3).

Conn. 1997. Party’s aid in connection with fraudulent offer or sale of securities qualifies as “material” aid, and provides basis for holding party liable on aiding and abetting theory under the Connecticut Uniform Securities Act (CUSA), if it has natural tendency to influence, or is capable of influencing, decision of purchaser. C.G.S.A. § 36–498(a)(2) (1993).—Connecticut Nat. Bank v. Giacomi, 699 A.2d 101, 242 Conn. 17.—Sec Reg 302.

Conn. 1996. Question as to whether prosecution’s undisclosed exculpatory evidence was “material,” so that constitutional error resulted from its suppression, is not whether defendant would more likely than not have received different verdict with evidence, but whether in its absence he received “fair trial,” understood as trial resulting in verdict worthy of confidence. U.S.C.A. Const.Amend. 6.—State v. Esposito, 670 A.2d 301, 235 Conn. 802.—Crim Law 700(2.1).

Conn. 1996. Omissions in state witness’ undisclosed tape recorded conversation with police officer did not constitute impeachment material sufficient to render undisclosed tape recording “material” within meaning of *Brady* rule, where witness telephoned police officer hoping to make deal on drug charges against him and his son in exchange for information implicating defendant in murder and burglary, so that it was not expected that he would disclose all information he had at time of recorded conversation.—State v. Esposito, 670 A.2d 301, 235 Conn. 802.—Crim Law 700(4).

Conn. 1996. Nondisclosed recorded conversation between police officer and state’s witness was not essential to defendant’s defense based on allegation that without testimony of witness, there was no evidence placing defendant at scene of murder, so that undisclosed tape recording was not “material” within meaning of *Brady* rule, in view of witness’ testimony that defendant said that he had witnessed murder, and in view of evidence that defendant led police to murder weapon, that defendant spent night after murder with alleged gunman, and that defendant lied to police about events of night of murder.—State v. Esposito, 670 A.2d 301, 235 Conn. 802.—Crim Law 700(3).

Conn. 1995. Variance between allegation and proof is “material” so as not to be disregarded only if defendant is prejudiced by it. Practice Book 1978 § 178.—Commissioner of Motor Vehicles v. DeMilo and Co., Inc., 659 A.2d 148, 233 Conn. 254.—Plead 388.

Conn. 1994. Timing of disclosure of police officer’s reports of victim’s statements, following victim’s testimony and departure to another state, did not violate defendant’s due process rights in sexual assault prosecution, despite claim that it prevented him from attacking victim’s credibility on cross-examination by confronting her with inconsistent statement, i.e., that assault took place in rest stop area, rather than in area of tall weeds as she had testified; reports were not “material” within meaning of *Brady*, particularly as reports did not contradict victim’s testimony or her formal statement to police, victim’s testimony that defendant had sexually assaulted her was supported by corroborating testimony and physical evidence, and specific location of assault, as opposed to its occurrence, was not issue in trial. U.S.C.A. Const.Amend. 14.—State v. Dugaard, 647 A.2d 342, 231 Conn. 195, certiorari denied 115 S.Ct. 770, 513 U.S. 1099, 130 L.Ed.2d 666.—Const Law 268(5); Crim Law 700(5).

Conn. 1993. Evidence is “material” if there is reasonable probability that had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome of proceeding.—State v. Harris, 631 A.2d 309, 227 Conn. 751.—Crim Law 700(2.1).

Conn. 1989. State’s failure to disclose to defendant prior to probable cause hearing on arson and arson murder charges statements by one prosecution witness inconsistent with her testimony at probable cause hearing that defendant had threatened to burn rooming house and statements by two other residents of burned rooming house implicating third person violated due process provision of Connecticut Constitution; statements were “material” because only other witness presented at hearing was investigating officer, and it was only testimony of prosecution witness that linked defendant to charged crimes. C.G.S.A. Const. Art. 1, § 8.—State v. McPhail, 567 A.2d 812, 213 Conn. 161.—Const Law 268(5); Crim Law 700(5).

Conn. 1984. To establish violation of due process by prosecution’s suppression of evidence favorable to defendant, defendant must show that evidence was “material,” i.e., that omitted evidence created reasonable doubt as to defendant’s guilt that did not otherwise exist, as evaluated in context of entire record. U.S.C.A. Const.Amend. 5; Practice Book 1978, §§ 741, 747; C.G.S.A. § 54–86c.—State v. Green, 480 A.2d 526, 194 Conn. 258, certiorari denied 105 S.Ct. 964, 469 U.S. 1191, 83 L.Ed.2d 969.—Const Law 268(5).

Conn. 1942. A charge that plaintiff could not recover if his negligence materially contributed to his own injuries was not insufficient as not charging that a plaintiff could not recover if his negligence was a substantial factor in causing his own injuries,

since words “material” and “substantial” were synonymous.—*Lewandoski v. Finkel*, 29 A.2d 762, 129 Conn. 526.—Trial 228(3).

Conn. 1935. In prosecution for perjury, false testimony in action to enforce replevin bond that bond had been subscribed by surety before witness as superior court commissioner held “material”. Gen.St.1930, § 5945.—*State v. Fasano*, 177 A. 376, 119 Conn. 455.—Perj 11(9).

Conn. 1902. With reference to a pleading, terms relevant and “material” should be employed whenever inquiry is as to performance by a selected portion of a pleading of a valuable office in place which it occupies, and its right therefore to that place.—*Hill v. Fairhaven & W. R. Co.*, 52 A. 725, 75 Conn. 177.

Conn.App. 2003. Evidence is “material,” as element of relevance, where it is offered to prove a fact directly in issue or a fact probative of a matter in issue. Code of Evidence, § 4-1.—*State v. Gibson*, 815 A.2d 172, 75 Conn.App. 103, certification denied 819 A.2d 839, 263 Conn. 906, certification granted 819 A.2d 840, 263 Conn. 906.—Crim Law 338(1).

Conn.App. 2002. Evidence is “material” only if there is a “reasonable probability” that, which is probability sufficient to undermine confidence in the outcome, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*State v. Spyke*, 792 A.2d 93, 68 Conn.App. 97, certification denied 804 A.2d 214, 261 Conn. 909.—Crim Law 700(2.1).

Conn.App. 2001. Any testimony in a case that tends of itself or in connection with other testimony to influence the result on a fact in issue is “material.”—*Dubreuil v. Witt*, 781 A.2d 503, 65 Conn.App. 35, on remand 2003 WL 356679.—Evid 143.

Conn.App. 2001. Evidence is “material” for *Brady* purposes only if there is a reasonable probability that, had evidence been disclosed to the defense, the result of proceeding would have been different, with a “reasonable probability” being a probability sufficient to undermine confidence in outcome.—*State v. Sitkiewicz*, 779 A.2d 782, 64 Conn.App. 108, certification denied 782 A.2d 1250, 258 Conn. 909.—Crim Law 700(2.1).

Conn.App. 2000. Nondisclosed exculpatory evidence is “material” for *Brady* purposes only if there is a reasonable probability that, had evidence been disclosed to the defense, the result of proceeding would have been different, with a “reasonable probability” being a probability sufficient to undermine confidence in the outcome.—*State v. Jones*, 761 A.2d 789, 60 Conn.App. 866, certification denied 769 A.2d 59, 255 Conn. 942.—Crim Law 700(2.1).

Conn.App. 2000. Mere possibility that item of undisclosed evidence might have helped the defense or might have affected outcome of trial does not establish that evidence is “material” for *Brady* purposes.—*State v. Jones*, 761 A.2d 789, 60 Conn. App. 866, certification denied 769 A.2d 59, 255 Conn. 942.—Crim Law 700(2.1).

Conn.App. 2000. Evidence of pretrial arrest of key prosecution witness on unrelated larceny charge was not “material” for *Brady* purposes, where evidence would have been cumulative as to bias and interest, and defendants did not proffer evidence as to how the conduct precipitating the larceny charge would have established witness’s character for untruthfulness.—*State v. Jones*, 761 A.2d 789, 60 Conn.App. 866, certification denied 769 A.2d 59, 255 Conn. 942.—Crim Law 700(4).

Conn.App. 2000. Evidence in confidential record is “material,” and thus subject to release to defendant following in camera inspection if it is also favorable, only if there is a reasonable probability that, had evidence been disclosed to defense, the result of the proceeding would have been different.—*State v. Olah*, 759 A.2d 548, 60 Conn.App. 350.—Crim Law 627.6(6), 627.8(4).

Conn.App. 1999. Impeaching evidence that key State witness was paid for his testimony by civic “crime-stopping” group was not “material,” and thus, State’s failure to disclose that evidence to defendant was not a *Brady* violation, where only part of witness’s testimony that was inconsistent with testimony of defendant’s former girlfriend was substantially corroborated by other evidence. U.S.C.A. Const.Amend. 14; C.G.S.A. § 54-86c.—*Quintana v. Commissioner of Correction*, 739 A.2d 701, 55 Conn.App. 426, certification denied 743 A.2d 614, 252 Conn. 904.—Crim Law 700(4).

Conn.App. 1999. Any testimony in a case that tends of itself or in connection with other testimony to influence the result on a fact in issue, or to affect the verdict of the jury, is “material.”—*Robert M. Elliott, P.C. v. Stuart*, 730 A.2d 1176, 53 Conn.App. 333, certification denied 733 A.2d 848, 249 Conn. 928.—Evid 143.

Conn.App. 1998. Where inmate testified only to fact that defendant admitted firing his rifle at victims’ automobile, and defendant also testified that he fired rifle at victims’ automobile, inmate’s psychiatric records would not have affected the outcome of the trial, and were not “material” under *Brady*.—*State v. Burke*, 723 A.2d 327, 51 Conn. App. 328, certification denied 732 A.2d 177, 248 Conn. 901.—Crim Law 700(3).

Conn.App. 1997. Suppressed evidence is “material” within meaning of *Brady* if it creates reasonable doubt of guilt that did not otherwise exist.—*State v. Connelly*, 700 A.2d 694, 46 Conn.App. 486, certification denied 713 A.2d 829, 244 Conn. 907, certification denied 713 A.2d 829, 244 Conn. 908, certiorari denied 119 S.Ct. 245, 525 U.S. 907, 142 L.Ed.2d 201, denial of post-conviction relief affirmed *Connelly v. Commissioner of Correction*, 780 A.2d 890, 258 Conn. 374.—Crim Law 700(2.1).

Conn.App. 1997. Any testimony in case that tends of itself or in connection with other testimony to influence the result on fact in issue is “material,” and if testimony would tend to affect verdict of jury, it meets test of materiality.—*Lane v. Stewart*, 698 A.2d 929, 46 Conn.App. 172, certification denied 702 A.2d 645, 243 Conn. 940.—Evid 143.

Conn.App. 1996. Vendor's failure to perform environmental testing and remediation work on property which was subject of sales agreement was not "material" breach of its contractual obligations, of kind which would relieve purchaser of obligation to perform, where parties' contract clearly contemplated transfer of contaminated property by permitting purchaser to deduct costs of any necessary remediation work from purchase price.—669 Atlantic Street Associates v. Atlantic-Rockland Stamford Associates, 682 A.2d 572, 43 Conn.App. 113, certification denied 686 A.2d 126, 239 Conn. 949, certification denied 686 A.2d 126, 239 Conn. 950.—Ven & Pur 186.

Conn.App. 1996. Vendor's failure to timely quit premises, upon expiration of term of its lease under sale-and-lease-back agreement, was not "material" breach of kind which would relieve purchaser of obligation to perform, as purchaser could have commenced summary process action to regain possession of property.—669 Atlantic Street Associates v. Atlantic-Rockland Stamford Associates, 682 A.2d 572, 43 Conn.App. 113, certification denied 686 A.2d 126, 239 Conn. 949, certification denied 686 A.2d 126, 239 Conn. 950.—Ven & Pur 186.

Conn.App. 1996. Fact is "material," for summary judgment purposes, if it will make difference in outcome of case.—Reynolds v. Chrysler First Commercial Corp., 673 A.2d 573, 40 Conn.App. 725, certification denied 675 A.2d 885, 237 Conn. 913.—Judgm 181(2).

Conn.App. 1995. To succeed on claim under the Connecticut Unfair Trade Practices Act (CUTPA), consumers must show that there was representation, omission or other practice likely to mislead consumers, that they interpreted message reasonably under the circumstances, and that misleading representation, omission or practice was "material," i.e., likely to affect consumer decisions or conduct. C.G.S.A. § 42-110a et seq.—Southington Sav. Bank v. Rodgers, 668 A.2d 733, 40 Conn.App. 23, certification denied 670 A.2d 1307, 236 Conn. 908.—Cons Prot 4, 34.

Conn.App. 1993. "Variance," which is departure of proof from facts as alleged, warrants reversal of judgment only if it is "material," in that it discloses departure from allegations in some matter essential to charge or claim.—A.V. Giordano Co., Inc. v. American Diamond Exchange, Inc., 623 A.2d 1048, 31 Conn.App. 163.—Plead 388.

Conn.App. 1986. Dispute concerning "material" fact, such as would preclude granting of party's motion for summary judgment, is dispute concerning fact which will make difference in result of case. Practice Book 1978, §§ 380, 382.—Genco v. Connecticut Light and Power Co., 508 A.2d 58, 7 Conn.App. 164.—Judgm 181(2).

Conn.App. 1985. Evidence suppressed by prosecutor is "material" in the constitutional sense, for purposes of collateral attack on conviction, only if there is reasonable probability that disclosure would result in different outcome, but not if suppressed evidence is merely cumulative.—Orsini v. Manson, 498 A.2d 114, 5 Conn.App. 277, certification dis-

missed 499 A.2d 804, 197 Conn. 815.—Hab Corp 480.

Conn.Super. 1999. For summary judgment purposes, "material" fact is one that will make a difference in outcome of case.—Sivek v. Baljevic, 758 A.2d 473, 46 Conn.Sup. 518, affirmed 758 A.2d 441, 60 Conn.App. 19.—Judgm 181(2).

Del.Supr. 2001. During jury selection in a capital murder case, a prospective juror's answer to a question about violent crime is "material," for purposes of determining whether the juror's nondisclosure of material information constitutes reversible error.—Banther v. State, 783 A.2d 1287, on remand 2002 WL 234744, opinion after remand from Supreme Court 2002 WL 32071689.—Crim Law 1166.16.

Del.Supr. 2001. For a fact omitted from a consent solicitation statement to be considered "material," there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.—Malpiede v. Townson, 780 A.2d 1075.—Corp 583.

Del.Supr. 2000. The term "material" in the context of the business judgment rule requiring directors to consider all material information reasonably available means relevant and of a magnitude to be important to directors in carrying out their fiduciary duty of care in decisionmaking.—Brehm v. Eisner, 746 A.2d 244.—Corp 310(2).

Del.Supr. 1999. Fact omitted by corporate directors seeking shareholder action is "material" if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.—O'Malley v. Boris, 742 A.2d 845, on remand 2002 WL 453928.—Corp 310(1).

Del.Supr. 1997. Omitted fact is "material," for purposes of determining whether corporate directors have fiduciary duty to disclose it, if there is substantial likelihood that reasonable stockholder would consider it important in deciding how to vote.—Loudon v. Archer-Daniels-Midland Co., 700 A.2d 135.—Corp 310(1).

Del.Supr. 1996. Fact omitted from board's statements to shareholders, in support of request for shareholder action, is "material" if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered "total mix" of information made available.—Zirn v. VLI Corp., 681 A.2d 1050.—Corp 310(1).

Del.Supr. 1993. Fact not disclosed to shareholders, in connection with request for shareholder action, is "material" if there is substantial likelihood that reasonable shareholder would consider it important in deciding how to vote.—Zirn v. VLI Corp., 621 A.2d 773, on remand 1994 WL 548938, on remand 1995 WL 362616, affirmed 681 A.2d 1050.—Corp 194.

Del.Ch. 2002. For undisclosed information to be "material," in the context of tender offer made

by corporation's controlling stockholder, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable stockholder as having significantly altered the total mix of information made available.—*In re Pure Resources, Inc., Shareholders Litigation*, 808 A.2d 421.—*Corp* 310(1).

Del.Ch. 2002. In order for alleged misrepresentations in a proxy statement to be "material," there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available to the shareholders.—*Orman v. Cullman*, 794 A.2d 5.—*Corp* 198(3).

Del.Ch. 2001. A fact is "material," for purposes of claim that partnership breached its duty to disclose fully and fairly all material facts within its control, if: (1) there is a substantial likelihood that a reasonable: (1) investor would consider it important in deciding how to vote; (2) it would have assumed actual significance in the deliberations of the reasonable investor; or (3) it would have significantly altered the total mix of information made available.—*R.S.M. Inc. v. Alliance Capital Management Holdings L.P.*, 790 A.2d 478.—*Partners* 366.

Del.Ch. 2000. As a general rule, information concerning proposed transaction is considered "material," and is thus subject to directors' fiduciary duty of disclosure to stockholders, if a reasonable investor would have viewed it as altering total mix of information available.—*Kohls v. Duthie*, 765 A.2d 1274.—*Corp* 310(1).

Del.Ch. 1999. Fact is "material" if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding how to vote.—*Solomon v. Armstrong*, 747 A.2d 1098, affirmed 746 A.2d 277.—*Corp* 310(1).

Del.Ch. 1998. An omitted fact is "material," and must be disclosed by directors seeking shareholder action, if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.—*In re Walt Disney Co. Derivative Litigation*, 731 A.2d 342, affirmed in part, reversed in part and remanded *Brehm v. Eisner*, 746 A.2d 244.—*Corp* 194.

Del.Ch. 1994. In determining whether director's financial interest is "material," so as to create conflict of interest precluding application of business judgment rule to board's approval of takeover offer and requiring that approval be analyzed under "entire fairness" standard, court is not to determine how or whether reasonable person in same or similar circumstances of exercising corporate responsibility would be affected by interest, but whether particular director in fact was or would likely to have been affected.—*Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1134, affirmed 663 A.2d 1156, rehearing denied, appeal after remand *Cede & Co. v. Technicolor, Inc.*, 684 A.2d 289, on remand 1999 WL 65042, reconsideration denied 1999 WL 135242, reversed 758 A.2d 485, rehearing denied, on remand 2001 WL 515106.—*Corp* 314(0.5).

Del.Super. 1933. As regards assured's breach of conditions of automobile indemnity policy, ordinarily, any misrepresentation bringing about issuance of policy on reduced premium rate is "material."—*Brooks Transp. Co. v. Merchants' Mut. Casualty Co.*, 171 A. 207, 36 Del. 40, 6 W.W.Harr. 40.—*Insurance* 3006.

D.C. 2003. Favorable evidence that is suppressed is "material" under *Brady*, and requires reversal, if it could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.—*Benton v. U.S.*, 815 A.2d 371.—*Crim Law* 1166(10.10).

D.C. 2002. Evidence withheld from the defense is "material" within the meaning of *Brady* if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.—*Bennett v. U.S.*, 797 A.2d 1251.—*Crim Law* 700(2.1).

D.C. 2002. Defendant did not establish that disclosure of name and address of the only eyewitness to the shooting was "material," as element for a *Brady* due process violation relating to prosecution's failure to disclose exculpatory evidence; defendant did not show how pre-trial knowledge of witness' name and address could have led to discovery of any exculpatory evidence, nor did he show that earlier disclosure of witness' identity would have been reasonably likely to produce a different outcome in the prosecution for first-degree murder while armed. *U.S.C.A. Const.Amend. 14*.—*Robinson v. U.S.*, 797 A.2d 698.—*Const Law* 268(5); *Crim Law* 700(3).

D.C. 2000. Favorable evidence is "material," and due process error results from its suppression by government, if there is a reasonable probability that, had evidence been disclosed to defendant, the result of proceeding would have been different. *U.S.C.A. Const.Amend. 5*.—*McCoy v. U.S.*, 760 A.2d 164, certiorari denied *Harrod v. U.S.*, 121 S.Ct. 1636, 532 U.S. 987, 149 L.Ed.2d 496, certiorari denied *Bracmort v. U.S.*, 121 S.Ct. 2257, 533 U.S. 909, 150 L.Ed.2d 243, certiorari denied 122 S.Ct. 227, 534 U.S. 900, 151 L.Ed.2d 163, certiorari denied *Burner v. U.S.*, 122 S.Ct. 486, 534 U.S. 1005, 151 L.Ed.2d 399.—*Const Law* 268(5); *Crim Law* 700(2.1).

D.C. 1996. Issues are "material," for purposes of rule requiring trial court to make findings on material issues, only to extent that they are disputed by parties. *Civil Rule* 52(a).—*Emerine v. Yancey*, 680 A.2d 1380.—*Fed Cts* 1052.1.

D.C. 1990. Test to determine whether evidence is "material" to guilt or "obviously exculpatory" is essentially the same under due process clause; evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; and "reasonable probability" is probability sufficient to undermine confidence in outcome. *U.S.C.A. Const.Amend. 5, 14*.—*James v. U.S.*, 580 A.2d 636.—*Const Law* 268(5).

D.C. 1972. Where issues on which Board of Zoning Adjustment failed to make express findings of fact, in ruling on application for exception to permit use of property for a private boys' high school, an application which aroused substantial neighborhood opposition, were within conditions to be considered under zoning regulations before exception could be granted, the issues were "material," and order granting exception would be vacated and case remanded for further proceedings. D.C.C.E. §§ 1-1509, 5-414.—*Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 293 A.2d 470.—Zoning 725, 726.

Fla. 1991. Evidence is "material" for *Brady* purposes only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 5, 14.—*Cruse v. State*, 588 So.2d 983, certiorari denied 112 S.Ct. 2949, 504 U.S. 976, 119 L.Ed.2d 572.—Crim Law 700(2.1).

Fla. 1919. The word "material," when used in reference to materialmen's liens, has a well-defined legal significance, and is understood to be something that becomes a part of the finished structure.—*Ramsey v. Hawkins*, 82 So. 823, 78 Fla. 189.—Mech Liens 45.

Fla.App. 1 Dist. 1996. Under Florida statute providing that misrepresentations shall not prevent recovery under insurance policies unless they are material, misstatement is deemed "material" if facts accurately stated might reasonably have influenced insurer in deciding whether to accept the risk. West's F.S.A. § 627.409.—*Carter v. United of Omaha Life Ins.*, 685 So.2d 2, rehearing denied.—Insurance 2958.

Fla.App. 1 Dist. 1984. Misrepresentation is "material" within meaning of perjury statute if it has mere potential to affect the resolution of issue before tribunal, whether it be in the guilt or innocence phase of the trial, or in pretrial suppression hearing. West's F.S.A. § 837.02.—*Kline v. State*, 444 So.2d 1102, petition for review denied 451 So.2d 849.—Perj 11(2).

Fla.App. 2 Dist. 1998. For insurer to rescind a policy based on a misrepresentation, the misrepresentation must only be material, not intentional; undisclosed information submitted in a policy application is "material" if the insurer would have altered the terms of the policy had the true facts been known, or if the true facts would have served as a basis for denying the policy application. West's F.S.A. § 627.409.—*Nationwide Mut. Fire Ins. Co. v. Kramer*, 725 So.2d 1141, review denied 732 So.2d 327.—Insurance 2958.

Fla.App. 2 Dist. 1998. For allegedly perjurious testimony to be "material," as required to sustain perjury conviction, it must have weight and reference to determination of an issue.—*Argyros v. State*, 718 So.2d 222, rehearing denied.—Perj 11(8).

Fla.App. 2 Dist. 1957. A matter is "material" to a main or secondary issue so that its untruthfulness

will constitute perjury, if it can influence the tribunal on the issue before it.—*State v. Fabian*, 97 So.2d 178.—Perj 11(2).

Fla.App. 3 Dist. 2000. Evidence is "material" for *Brady* purposes if there is a reasonable probability that, had evidence been disclosed to the defense, the result of proceeding would have been different, with a "reasonable probability" being a probability sufficient to undermine confidence in outcome.—*Billie v. State*, 774 So.2d 819.—Crim Law 700(2.1).

Fla.App. 4 Dist. 1987. Misrepresentation by insured is "material" so as to permit avoidance of policy if it does not enable reasonable insurer to adequately estimate nature of risk in determining whether to assume risk. West's F.S.A. § 627.409(1)(b, c).—*Singer v. Nationwide Mut. Fire Ins. Co.*, 512 So.2d 1125.—Insurance 2958.

Fla.App. 4 Dist. 1979. Where changes and amendments that were made in condominium documents after documents had been furnished to prospective purchasers and without the approval of the prospective purchasers included clause eliminating developer's obligation to construct tennis, marine and garden facilities on the ground lease area and clause adding restrictions on the use of condominium units, including limitations on decoration, enclosure or alteration of the units, and where other changes exposed unit owners to increased operating costs and increased the exposure of the units to liens, changes were "material" within meaning of statute which prohibits any changes or amendments "materially" affecting the rights of a purchaser or the value of a unit. F.S.1970 Supp. § 711.24(2).—*Barber v. Chalfonte Development Corp.*, 369 So.2d 983, certiorari denied 379 So.2d 203.—Condo 3.

Fla.App. 4 Dist. 1975. County comptroller's testimony before grand jury investigating the conduct of his office regarding the date of employment contract with his wife was "material" where the contract, if executed in 1969 as defendant testified, would not violate anti-nepotism statute. West's F.S.A. § 116.111.—*Wheeler v. State*, 311 So.2d 713, certiorari denied 330 So.2d 22, stay denied 96 S.Ct. 2164, 425 U.S. 968, 48 L.Ed.2d 792, certiorari denied 96 S.Ct. 3167, 426 U.S. 948, 49 L.Ed.2d 1184.—Perj 11(7).

Fla.App. 5 Dist. 1996. Representation is "material" under perjury statute if it has mere potential to affect resolution of main or secondary issue before court. West's F.S.A. § 837.02(1).—*Soller v. State*, 666 So.2d 992.—Perj 11(2).

Fla.App. 5 Dist. 1996. Misrepresentations which tend to bolster credibility of witness, whether they are successful or not, have that potential and are regarded as "material" for purposes of perjury conviction. West's F.S.A. § 837.02(1).—*Soller v. State*, 666 So.2d 992.—Perj 11(9).

Fla.App. 5 Dist. 1993. Evidence supported finding that misrepresentations made in application for major medical coverage were not "material" so as to justify denial of coverage for insured's daughter's hospitalization; although application indicated that there had been no treatment for heart disease, due

to insured's wife's mistaken belief that daughter's heart problem was condition rather than disease, and although medical records attached to application did not disclose daughter's most recent visit to physician, there was evidence showing that agent was advised about daughter's heart problem and that agent apprised underwriter of problem, and there was no showing that insurer would have denied coverage had it been informed that insured had previously been denied coverage by another insurer. West's F.S.A. § 627.409.—Cox v. American Pioneer Life Ins. Co., 626 So.2d 243, review denied 637 So.2d 233.—Insurance 3015, 3025.

Ga. 2002. For evidence that the State failed to preserve to be "material," the evidence must have had an apparent exculpatory value before it was lost and be of such a nature that the defendant cannot obtain comparable evidence by other reasonable means.—Brannan v. State, 561 S.E.2d 414, 275 Ga. 70, reconsideration denied, certiorari denied 123 S.Ct. 541, 154 L.Ed.2d 429, rehearing denied 123 S.Ct. 957, 154 L.Ed.2d 859.—Crim Law 700(9).

Ga.App. 2003. "Material" for the improvement of real estate, for purpose of statutes granting liens on real estate to persons furnishing materials for the improvement, means something that goes into and becomes a part of the finished structure, such as lumber, nails, glass, or hardware, which is necessary to the completion of the building, the object of the lien statutes being to secure a lien for that which goes into the structure. West's Ga.Code Ann. § 44-14-361.—Amador v. Thomas, 578 S.E.2d 537, 259 Ga.App. 835.—Mech Liens 45.

Ga.App. 1997. For purpose of determining whether false statement is "material" so as to constitute perjury, when a witness testifies on a material issue, the credibility of the witness becomes relevant, and so matters relevant to the witness' credibility and, collaterally, material to the issue about which the witness is testifying, are "material." O.C.G.A. § 16-10-70(a).—West v. State, 492 S.E.2d 576, 228 Ga.App. 713.—Perj 11(2), 11(9).

Ga.App. 1980. In order to void policy of insurance for misrepresentation in the application, insurer must show that representation was false and that it was "material" in that it changed nature, extent, or character of risk. Code, § 56-2409.—Sentry Indem. Co. v. Brady, 264 S.E.2d 702, 153 Ga.App. 168.—Insurance 2955, 2958.

Ga.App. 1967. "Material" within meaning of statute providing for lien to persons furnishing material is something that goes into and becomes a part of the finished structure, such as lumber, nails, glass, and hardware, which is necessary to the completion of the building. Code, § 67-2001.—D. H. Overmyer Warehouse Co. v. W. C. Caye & Co., 157 S.E.2d 68, 116 Ga.App. 128.—Mech Liens 45.

Ga.App. 1940. Generally it is sufficient in indictment for perjury to charge that testimony alleged to have been false was in relation to a matter "material" to point or question in issue without setting forth in detail facts showing how such testimony was material, and one test of "materiality" is whether alleged false statements could have influ-

enced decision as to the question at issue. Code 1933, § 26-4001.—Darnell v. State, 11 S.E.2d 692, 63 Ga.App. 582.—Perj 25(5).

Ga.App. 1940. An indictment charging perjury was not demurrable on ground that indictment showed on its face that testimony upon which perjury was assigned was not "material", where indictment alleged that accused's false statement tended to affect opinion of grand jury and caused it not to return a true bill against named persons charged with burglary, whereas if accused had sworn truthfully it would have tended to cause grand jury to find a true bill against such persons. Code 1933, § 26-4001.—Darnell v. State, 11 S.E.2d 692, 63 Ga.App. 582.—Perj 25(6).

Ga.App. 1936. As regards criminal liability for perjury, whatever evidence tends to influence result of direct or collateral issue is "material," but what is not thus adapted to affect result is not "material"; the test of materiality being whether alleged false statement should have influenced decision as to question at issue in judicial proceeding in which perjury is alleged to have been committed.—Williford v. State, 185 S.E. 611, 53 Ga.App. 334.—Perj 11(2).

Ga.App. 1929. Where a witness has testified to a material issue in a case, perjury may be assigned upon false testimony affecting his credibility. Under the foregoing rule, the alleged false testimony in this case was "material," within the meaning of Pen. Code 1910, § 259; and, since the material allegations of the indictment are sustained by the testimony of two witnesses, the evidence supports the verdict.—Oxford v. State, 150 S.E. 466, 40 Ga.App. 511.

Ga.App. 1908. The words "material" and "not material" are absolutely contradictory in that they exclude all middle ground and together include everything thinkable.—Bennett v. Ware, 61 S.E. 546, 130 Ga. 671.

Hawai'i 2002. A fact is "material," for purposes of summary judgment, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.—Coon v. City and County of Honolulu, 47 P.3d 348, 98 Hawai'i 233.—Judgm 181(2).

Hawai'i 2001. A fact is "material," for purposes of a summary judgment motion, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—Bitney v. Honolulu Police Dept., 30 P.3d 257, 96 Hawai'i 243.—Judgm 181(2).

Hawai'i 2001. Fact is "material," for purposes of a summary judgment motion, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—Blair v. Ing, 21 P.3d 452, 95 Hawai'i 247, reconsideration denied.—Judgm 181(2).

Hawai'i 2000. A fact is "material," for purposes of summary judgment, if proof of that fact would

have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—*Shoppe v. Gucci America, Inc.*, 14 P.3d 1049, 94 Hawai'i 368.—Judgm 181(2).

Hawai'i 1999. Defendant general partner's alleged misrepresentation to plaintiff general partner regarding actual value of hotel owned by the general partnership, in connection with loan workout in which defendant became owner of hotel and plaintiff obtained option to purchase hotel from defendant, was not "material," where the option price was set so that defendant could recover the new money it was paying to settle the hotel loans if the option was exercised.—*TSA Intern. Ltd. v. Shimizu Corp.*, 990 P.2d 713, 92 Hawai'i 243, as am on denial of reconsideration.—Fraud 18.

Hawai'i 1999. Nondisclosure of information by a partner does not constitute a breach of fiduciary duty unless the nondisclosed facts were "material," such as might be expected to have induced action or forbearance by the other partners. HRS § 425-121(1).—*TSA Intern. Ltd. v. Shimizu Corp.*, 990 P.2d 713, 92 Hawai'i 243, as am on denial of reconsideration.—Partners 70.

Hawai'i 1999. An omitted fact is "material" if there is a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of a reasonable person.—*TSA Intern. Ltd. v. Shimizu Corp.*, 990 P.2d 713, 92 Hawai'i 243, as am on denial of reconsideration.—Fraud 18.

Hawai'i 1999. Defendant general partner's alleged breach of fiduciary duty in failing to disclose to plaintiff general partner, in connection with loan workout, the appraisal of the hotel owned by the general partnership was not "material," where the option price for plaintiff to purchase hotel from defendant after the workout was not based on the hotel's value and the appraisal information was not unique or unavailable from other sources. HRS § 425-121(1).—*TSA Intern. Ltd. v. Shimizu Corp.*, 990 P.2d 713, 92 Hawai'i 243, as am on denial of reconsideration.—Partners 376.

Hawai'i 1999. Alleged breach of fiduciary duty by defendant general partner in failing to disclose to plaintiff general partner a tax analysis regarding loan workout for the general partnership's debt was not "material," where plaintiff could have easily obtained its own tax analysis and the analysis could not have been reliable with respect to plaintiff because defendant lacked information regarding the 82 entities in plaintiff's tax group. HRS § 425-121(1).—*TSA Intern. Ltd. v. Shimizu Corp.*, 990 P.2d 713, 92 Hawai'i 243, as am on denial of reconsideration.—Partners 376.

Hawai'i 1999. A fact is "material," for purposes of summary judgment motion, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—*Garcia v. Kaiser Foundation Hospitals*, 978 P.2d 863, 90 Hawai'i 425.—Judgm 181(2).

Hawai'i 1999. In context of summary judgment, a fact is "material" if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—*County of Kaua'i v. Scottsdale Ins. Co., Inc.*, 978 P.2d 838, 90 Hawai'i 400.—Judgm 181(2).

Hawai'i 1999. Fact is "material," for summary judgment purposes, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.—*State Farm Fire and Cas. Co. v. Pacific Rent-All, Inc.*, 978 P.2d 753, 90 Hawai'i 315, reconsideration denied.—Judgm 181(2).

Hawai'i 1998. A fact is "material," for purposes of summary judgment motion, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.—*Foytik v. Chandler*, 966 P.2d 619, 88 Hawai'i 307, as amended.—Judgm 181(2).

Hawai'i 1998. A fact is "material," for purposes of summary judgment motion, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.—*Frank v. Hawaii Planing Mill Foundation*, 963 P.2d 349, 88 Hawai'i 140.—Judgm 181(2).

Hawai'i 1996. Summary judgment is appropriate if pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law; fact is "material" if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—*Crompton v. Tern Corp.*, 924 P.2d 169, 83 Hawai'i 1.—Judgm 181(2), 185(6).

Hawai'i App. 2001. A fact is "material," for purposes of summary judgment, if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.—*Foronda ex rel. Estate of Foronda v. Hawaii Intern. Boxing Club*, 25 P.3d 826, 96 Hawai'i 51, certiorari denied.—Judgm 181(2).

Hawai'i App. 1983. For purposes of summary judgment, a fact is "material" if proof thereof would have effect of establishing or refuting one of the essential elements of a cause of action or defense. Rules Civ.Proc., Rule 56(c).—*McKeague v. Talbert*, 658 P.2d 898, 3 Haw.App. 646.—Judgm 181(2).

Idaho 2001. Evidence is "material" for purposes of *Brady's* due process analysis if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const. Amend. 14.—*Porter v. State*, 32 P.3d 151, 136 Idaho 257, rehearing denied.—Const Law 268(5).

Idaho 1999. Carrier who provided general liability and equipment insurance for the general contractor for construction of natural gas pipeline did not have mechanic's lien for unpaid insurance premiums, as the providing of such insurance was neither "labor" nor "material" consumed in the process of structurally improving real property. I.C. § 45-501.—Great Plains Equipment, Inc. v. Northwest Pipeline Corp., 979 P.2d 627, 132 Idaho 754, rehearing denied, appeal after remand 36 P.3d 218, 136 Idaho 466.—Mech Liens 35, 45.

Idaho 1999. Suppliers of fuel and lubrication products for construction equipment and passenger vehicles used in construction of natural gas pipeline did not have mechanic's liens for products that were not paid for, as the providing of such products was neither "labor" nor "material" consumed in the process of structurally improving real property. I.C. § 45-501.—Great Plains Equipment, Inc. v. Northwest Pipeline Corp., 979 P.2d 627, 132 Idaho 754, rehearing denied, appeal after remand 36 P.3d 218, 136 Idaho 466.—Mech Liens 35, 47.

Idaho 1998. Breach of contract is not "material" if substantial performance has been rendered.—First Sec. Bank of Idaho, N.A. v. Murphy, 964 P.2d 654, 131 Idaho 787, rehearing denied.—Contracts 294.

Idaho 1998. Where former spouses agreed to partition land they held as tenants in common, but former husband failed to disclose that he had harvested timber from portion awarded to former wife, his nondisclosure was nondisclosure of "material" fact which supported former wife's claim for fraud.—Watts v. Krebs, 962 P.2d 387, 131 Idaho 616.—Fraud 18.

Idaho App. 2000. Evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a reasonable probability is a probability sufficient to undermine confidence in the outcome.—State v. Ward, 14 P.3d 388, 135 Idaho 68, rehearing denied, and review filed, and review denied.—Crim Law 700(2.1).

Idaho App. 1998. False statement in search warrant affidavit is "material" if without it, probable cause would not have been found; an omission of facts is material if there is a substantial probability that, had the omitted information been included, it would have altered the magistrate's determination of probable cause. U.S.C.A. Const.Amend. 4.—State v. Morris, 961 P.2d 653, 131 Idaho 562, review denied.—Searches 112.

Idaho App. 1996. Undisclosed evidence is "material" for purposes of due process analysis, if there is reasonable probability that, had evidence been available to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 5, 14; Const. Art. 1, § 13.—State v. Dopp, 930 P.2d 1039, 129 Idaho 597, petition for review denied.—Const Law 268(5).

Idaho App. 1994. Evidence is "material," for purposes of evaluating claimed *Brady* violation, only

if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome.—State v. Gardner, 885 P.2d 1144, 126 Idaho 428.—Crim Law 700(2.1).

Idaho App. 1992. False statement usually will be "material" for purposes of supporting perjury charge if it is material to any proper point of inquiry and is calculated and intended to bolster testimony of the witness on some material point or to support or attack his credibility, even though it does not bear directly on ultimate issue of fact. I.C. § 18-5401.—State v. McBride, 846 P.2d 914, 123 Idaho 263, review denied.—Perj 11(2).

Idaho App. 1991. Prosecution must produce exculpatory evidence that is "material"; evidence is "material" only if, viewed in relation to all competent evidence, it appears to raise reasonable doubt concerning defendant's guilt. U.S.C.A. Const. Amend. 14; Criminal Rule 16(a).—State v. Johnson, 816 P.2d 364, 120 Idaho 408.—Crim Law 700(2.1).

Idaho App. 1991. "Evidence" is "material" only if there is "reasonable probability" that, had evidence been disclosed to defense, result would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 14; Criminal Rule 16(a).—State v. Johnson, 816 P.2d 364, 120 Idaho 408.—Crim Law 700(2.1).

Idaho App. 1990. Codefendant's recantation of joint trial testimony that defendant played primary role in murder was not "material" to issue of premeditation such that new trial was required; although codefendant's recantation indicated that he rather than defendant devised plan for luring victim to murder scene, it also acknowledged that defendant was aware of plan, and defendant did not contradict testimony of other trial witnesses that defendant talked about killing victim before murder.—Bean v. State, 809 P.2d 506, 119 Idaho 645, review granted, affirmed as modified 809 P.2d 493, 119 Idaho 632, appeal after remand 858 P.2d 327, 124 Idaho 187.—Crim Law 942(2).

Idaho App. 1984. Trial judge must find the value of each "material" asset in a divorce case, and the amount of each "material" community debt should also be found; "material" means any asset or debt sufficient to affect the substantial equality sought to be achieved by the decree. Rules Civ. Proc., Rule 52(a).—Donndelinger v. Donndelinger, 690 P.2d 366, 107 Idaho 431.—Divorce 253(4).

Idaho App. 1982. Evidence which has been withheld by prosecution or which has not been preserved by prosecution is "material" if, viewed in relation to all competent evidence admitted at trial, it appears to raise a reasonable doubt concerning defendant's guilt.—State v. Leatherwood, 656 P.2d 760, 104 Idaho 100.—Crim Law 700(2.1).

Ill. 2001. In the context of establishing that the state's failure to disclose evidence to a defendant constituted a violation of *Brady*, which requires

state to provide defendant with evidence, when the evidence is both favorable to the accused and material, "favorable evidence" is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*People v. Barrow*, 255 Ill.Dec. 410, 749 N.E.2d 892, 195 Ill.2d 506, rehearing denied, certiorari denied *Barrow v. Wells*, 122 S.Ct. 669, 534 U.S. 1067, 151 L.Ed.2d 583.—Crim Law 700(2.1).

Ill. 2001. Suppressed evidence will be deemed "material," in violation of *Brady*, only if there exists a reasonable probability that the result of the proceeding would have been different if the evidence had been disclosed to the defense.—*People v. Barrow*, 255 Ill.Dec. 410, 749 N.E.2d 892, 195 Ill.2d 506, rehearing denied, certiorari denied *Barrow v. Wells*, 122 S.Ct. 669, 534 U.S. 1067, 151 L.Ed.2d 583.—Crim Law 700(2.1).

Ill. 2000. Evidence is considered "material" for *Brady* purposes if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*People v. Mahaffey*, 252 Ill.Dec. 1, 742 N.E.2d 251, 194 Ill.2d 154, rehearing denied, certiorari denied *Mahaffey v. Illinois*, 122 S.Ct. 565, 534 U.S. 1029, 151 L.Ed.2d 439.—Crim Law 700(2.1).

Ill. 1998. Testimony of six witnesses concerning the alleged mental instability of an accomplice/eyewitness was not "material" to the defense in a prosecution for murder, arson, burglary, and other offenses; thus, defendant did not have a right to compel the witnesses' presence. U.S.C.A. Const. Amend. 6.—*People v. McLaurin*, 234 Ill.Dec. 399, 703 N.E.2d 11, 184 Ill.2d 58, rehearing denied, certiorari denied *McLaurin v. Illinois*, 119 S.Ct. 1506, 526 U.S. 1091, 143 L.Ed.2d 659.—Witn 2(1).

Ill. 1998. Evidence is "material" when it tends to raise a reasonable doubt of the defendant's guilt; the pertinent inquiry is not whether the evidence might have helped the defense but whether it is reasonably likely that the evidence would have affected the outcome of the case.—*People v. McLaurin*, 234 Ill.Dec. 399, 703 N.E.2d 11, 184 Ill.2d 58, rehearing denied, certiorari denied *McLaurin v. Illinois*, 119 S.Ct. 1506, 526 U.S. 1091, 143 L.Ed.2d 659.—Crim Law 382.

Ill. 1998. Favorable evidence is "material" to case of accused, and thus must be disclosed by prosecution under *Brady*, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const. Amend. 14.—*People v. Hobley*, 231 Ill.Dec. 321, 696 N.E.2d 313, 182 Ill.2d 404.—Crim Law 700(2.1).

Ill. 1997. For purposes of rule that defendant is deprived of his constitutional right to due process where prosecution fails to turn over material impeachment evidence to defense, evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine

confidence in outcome. U.S.C.A. Const. Amend. 14.—*People v. Olinger*, 223 Ill.Dec. 588, 680 N.E.2d 321, 176 Ill.2d 326, rehearing denied.—Const Law 268(5).

Ill. 1995. Evidence is "material," for purposes of *Brady v. Maryland* (which requires prosecution to disclose evidence that is material to suspect's guilt or innocence if suspect makes specific request for production of such evidence), when it would tend to raise reasonable doubt of defendant's guilt; pertinent inquiry is not whether evidence might have helped defense, but whether it is reasonably likely that it would have affected outcome of case.—*People v. Sims*, 212 Ill.Dec. 931, 658 N.E.2d 413, 167 Ill.2d 483, rehearing denied, certiorari denied *Sims v. Illinois*, 116 S.Ct. 1577, 517 U.S. 1172, 134 L.Ed.2d 675.—Crim Law 700(2.1).

Ill. 1995. Term "material" as used within perjury statute refers to relevance of misstatements. S.H.A. 720 ILCS 5/32-2.—*People v. Davis*, 207 Ill.Dec. 484, 647 N.E.2d 977, 164 Ill.2d 309, rehearing denied.—Perj 11(2).

Ill. 1976. Where owner of nursing home would be found in violation of New Jersey law if it was determined that he charged flight expenses incidental to his Chicago business to New Jersey medicaid subsidy program and indicating that employee of owner, as day-to-day administrator of Chicago nursing home, had knowledge of owner's activities when he came to Illinois and had stated to New Jersey investigators that much of owner's time was spent supervising Chicago facility, employee's testimony was "material" to New Jersey grand jury investigation, and thus summons was properly issued under Uniform Act to secure the attendance of witnesses from within or without a state in criminal proceedings. S.H.A. ch. 38, § 156-2.—*In re Adams*, 1 Ill.Dec. 55, 356 N.E.2d 55, 64 Ill.2d 269.—Gr Jury 36.2.

Ill.App. 1 Dist. 2001. Breach of contract is "material" where covenant breached is one of such importance that contract would not have been entered into without it.—*Wolfram Partnership, Ltd. v. LaSalle Nat. Bank*, 262 Ill.Dec. 404, 765 N.E.2d 1012, 328 Ill.App.3d 207, as modified on denial of rehearing, appeal denied 271 Ill.Dec. 943, 786 N.E.2d 201, 201 Ill.2d 618.—Contracts 317.

Ill.App. 1 Dist. 2001. A misrepresentation is "material," in context of a common-law fraud claim, if the plaintiff would have acted differently had he been aware of it, or if it concerned the type of information upon which he would be expected to rely when making his decision to act.—*Miller v. William Chevrolet/GEO, Inc.*, 260 Ill.Dec. 735, 762 N.E.2d 1, 326 Ill.App.3d 642, rehearing denied, and as modified on denial of rehearing, appeal denied 262 Ill.Dec. 620, 766 N.E.2d 240, 198 Ill.2d 594.—Fraud 18.

Ill.App. 1 Dist. 2001. Favorable evidence is "material," and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*People v. Walls*, 256

Ill.Dec. 576, 752 N.E.2d 456, 323 Ill.App.3d 436, appeal denied 271 Ill.Dec. 940, 786 N.E.2d 198, 201 Ill.2d 610.—Crim Law 700(2.1).

Ill.App. 1 Dist. 1998. Facts allegedly misrepresented or withheld by law firm partnership, in connection with severance agreement that attorney signed after his expulsion from the partnership, were not “material”; attorney claimed that law firm falsely stated his severance payment was the largest given to any terminated partner and was the same amount he would have received if he had resigned voluntarily, and that law firm concealed fact that no vote had been taken on attorney’s expulsion from partnership.—*Golden v. McDermott, Will & Emery*, 234 Ill.Dec. 241, 702 N.E.2d 581, 299 Ill.App.3d 982, rehearing denied, appeal denied 236 Ill.Dec. 669, 707 N.E.2d 1239, 182 Ill.2d 549.—Atty & C 30.

Ill.App. 1 Dist. 1998. A withheld fact is “material” if the plaintiff would have acted differently had he been aware of it.—*Golden v. McDermott, Will & Emery*, 234 Ill.Dec. 241, 702 N.E.2d 581, 299 Ill.App.3d 982, rehearing denied, appeal denied 236 Ill.Dec. 669, 707 N.E.2d 1239, 182 Ill.2d 549.—Fraud 18.

Ill.App. 1 Dist. 1996. Fact is considered “material,” and is one which broker must disclose, if it would likely influence principal’s beliefs regarding desirability of transaction.—*Letsos v. Century 21-New West Realty*, 221 Ill.Dec. 310, 675 N.E.2d 217, 285 Ill.App.3d 1056.—Brok 19.

Ill.App. 1 Dist. 1996. Misrepresentation is “material” if plaintiff would have acted differently had he been aware of falsity of statement.—*Kleinwort Benson North America, Inc. v. Quantum Financial Services, Inc.*, 220 Ill.Dec. 457, 673 N.E.2d 369, 285 Ill.App.3d 201, appeal allowed 222 Ill.Dec. 437, 677 N.E.2d 971, 171 Ill.2d 585, affirmed 229 Ill.Dec. 496, 692 N.E.2d 269, 181 Ill.2d 214.—Fraud 18.

Ill.App. 1 Dist. 1996. Misrepresentation is “material” if one making it knew that statement was likely to induce recipient to engage in conduct in question.—*Kleinwort Benson North America, Inc. v. Quantum Financial Services, Inc.*, 220 Ill.Dec. 457, 673 N.E.2d 369, 285 Ill.App.3d 201, appeal allowed 222 Ill.Dec. 437, 677 N.E.2d 971, 171 Ill.2d 585, affirmed 229 Ill.Dec. 496, 692 N.E.2d 269, 181 Ill.2d 214.—Fraud 18.

Ill.App. 1 Dist. 1995. Whether false statement is “material,” for purposes of prohibition against making false material statement concerning hazardous waste, depends on whether statement will have tendency to influence action of Illinois Environmental Protection Agency (IEPA). S.H.A. 415 ILCS 5/44(h)(2).—*People v. Gawlak*, 212 Ill.Dec. 712, 657 N.E.2d 1057, 276 Ill.App.3d 286.—Fraud 68.10(4).

Ill.App. 1 Dist. 1995. Defendant’s falsification of labels on barrels of hazardous waste so as to make it appear that waste had been on-site less than 90 days, and therefore did not count as inventory, was “material” for purposes of prohibition against making material false statement concerning hazardous waste, even though plant at which defen-

dant worked was in compliance with 55,000-gallon limit set by consent decree regardless of defendant’s actions; defendant’s actions had tendency to thwart Illinois Environmental Protection Agency’s (IEPA) ability to perform one of its primary duties, collecting and disseminating accurate information concerning hazardous waste, and had tendency to forestall IEPA investigation. S.H.A. 415 ILCS 5/44(h)(2).—*People v. Gawlak*, 212 Ill.Dec. 712, 657 N.E.2d 1057, 276 Ill.App.3d 286.—Fraud 68.10(4).

Ill.App. 1 Dist. 1993. Whether insurance applicant’s statements are “material” is determined by whether reasonably careful and intelligent person would have regarded facts stated as substantially increasing chances of events insured against, so as to cause rejection of application for different conditions. Ill.Rev.Stat.1991, ch. 73, ¶ 766.—*Ratliff v. Safeway Ins. Co.*, 195 Ill.Dec. 473, 628 N.E.2d 937, 257 Ill.App.3d 281.—Insurance 2958.

Ill.App. 1 Dist. 1993. “Material” change in circumstances occurs with respect to zoning matters as required to defeat application of res judicata to earlier judgment when area in question has undergone subsequent changes resulting from zoning amendments and variations in use of surrounding property.—*Burke v. Village of Glenview*, 195 Ill. Dec. 1, 628 N.E.2d 465, 257 Ill.App.3d 63.—Zoning 727.

Ill.App. 1 Dist. 1992. For evidence to be “material,” for purposes of *Brady v. Maryland*, which requires prosecution to supply exculpatory evidence to defendant upon specific request for its production, it is not enough that evidence might have helped defense; rather, evidence must reasonably be expected to affect outcome of case.—*People v. Crisp*, 182 Ill.Dec. 206, 609 N.E.2d 740, 242 Ill. App.3d 652, appeal denied 186 Ill.Dec. 387, 616 N.E.2d 340, 151 Ill.2d 569, habeas corpus denied *Crisp v. Godinez*, 1995 WL 549040, affirmed 129 F.3d 1267.—Crim Law 700(2.1).

Ill.App. 1 Dist. 1992. Misrepresentation is “material” for purposes of fraudulent misrepresentation action if it relates to matter upon which plaintiff would be expected to rely in determining whether to engage in conduct in question; test of materiality is thus whether reasonable and prudent investor would attach importance to those facts in determining his choice of action.—*Metzger v. New Century Oil and Gas Supply Corp. Income and Development Program-1982*, 171 Ill.Dec. 698, 594 N.E.2d 1218, 230 Ill.App.3d 679, appeal denied 176 Ill.Dec. 803, 602 N.E.2d 457, 146 Ill.2d 631.—Fraud 18.

Ill.App. 1 Dist. 1990. Evidence is “material,” for purposes of due process requirement that State produce evidence material to question of defendant’s guilt or innocence after information has been requested, only if there is reasonable probability that result of proceeding would have been different if evidence had been disclosed; it is not enough that evidence might have helped defense. U.S.C.A. Const.Amends. 5, 14.—*People v. Chambers*, 146 Ill.Dec. 311, 558 N.E.2d 274, 200 Ill.App.3d 538, appeal denied 156 Ill.Dec. 563, 571 N.E.2d 150, 137 Ill.2d 667, habeas corpus denied U.S. ex rel. Cham-

bers v. Page, 39 F.Supp.2d 1091.—Const Law 268(5).

Ill.App. 1 Dist. 1985. Misrepresentation is “material” and therefore actionable if it is such that had the other party been aware of it, he would have acted differently; the misrepresented condition must be essential element to the transaction between the parties.—Mack v. Plaza Dewitt Ltd. Partnership, 92 Ill.Dec. 169, 484 N.E.2d 900, 137 Ill.App.3d 343, appeal denied.—Fraud 18.

Ill.App. 1 Dist. 1985. In action under the Consumer Fraud Act, for a concealed fact to be “material,” the fact must have been such that had the other party known of it, he would have acted in a different manner. S.H.A. ch. 121½, ¶ 262.—Perleman v. Time, Inc., 88 Ill.Dec. 524, 478 N.E.2d 1132, 133 Ill.App.3d 348, appeal denied.—Cons Prot 34.

Ill.App. 1 Dist. 1984. Inconsistency between rape victim’s trial testimony, wherein victim testified that rapist wore women’s panties around the outside of his face so that his whole face was visible to her, and statement that victim allegedly made to a neighbor after the occurrence to the effect that her attacker’s face was covered by a pair of women’s panties and that he could only look through the leg holes, was “material” within meaning of perjury statute. S.H.A. ch. 38, ¶ 32-2(a).—People v. Cihlar, 80 Ill.Dec. 513, 465 N.E.2d 625, 125 Ill.App.3d 204, affirmed 95 Ill.Dec. 297, 489 N.E.2d 859, 111 Ill.2d 212.—Perj 11(2).

Ill.App. 1 Dist. 1980. Whether mistake or misrepresentation, the matter of the misstatement must be material; to be “material,” the condition must be essential to one of the parties and must be mutually agreed on and understood by the parties.—Giacomazzi v. Urban Search Corp., 41 Ill.Dec. 123, 407 N.E.2d 621, 86 Ill.App.3d 429.—Fraud 18.

Ill.App. 1 Dist. 1979. A misrepresentation is “material” and, hence, actionable if it relates to a matter upon which plaintiff could be expected to rely in determining to engage in conduct in question.—Mother Earth, Ltd. v. Strawberry Camel, Ltd., 28 Ill.Dec. 226, 390 N.E.2d 393, 72 Ill.App.3d 37, appeal after remand 54 Ill.Dec. 8, 424 N.E.2d 758, 98 Ill.App.3d 518.—Fraud 18.

Ill.App. 1 Dist. 1979. Omitted evidence which creates a reasonable doubt of guilt that did not otherwise exist is “material,” but the mere possibility that evidence might have aided the defense, or might have affected the outcome of the trial, does not establish “materiality” in the constitutional sense.—People v. Hardy, 26 Ill.Dec. 212, 387 N.E.2d 1042, 70 Ill.App.3d 351.—Crim Law 700(2.1).

Ill.App. 1 Dist. 1975. Evidence is “material” to the guilt or innocence of the defendant when it is of probative character on that question and it is “probative” when to the normal mind it tends to prove or disprove a matter at issue.—People v. Nichols, 327 N.E.2d 186, 27 Ill.App.3d 372, affirmed and remanded 349 N.E.2d 40, 63 Ill.2d 443.—Crim Law 382.

Ill.App. 1 Dist. 1971. Where zoning classification is twice challenged, doctrine of res judicata should be applied unless plaintiff can show materially changed circumstances; and to the extent that alleged changed circumstances arise solely from an intensified use of property within preexisting zoning classifications, they cannot be deemed “material.”—Mistretta v. Village of River Forest, 276 N.E.2d 131, 2 Ill.App.3d 102.—Judgm 585(5).

Ill.App. 2 Dist. 2002. For the purpose of establishing perjury, an allegedly perjurious statement is “material” if it influenced, or could have influenced, the trier of fact in its deliberations on the issues presented to it. S.H.A. 720 ILCS 5/32-2(a).—People v. Baltzer, 261 Ill.Dec. 247, 762 N.E.2d 1174, 327 Ill.App.3d 222, rehearing denied, case dismissed 271 Ill.Dec. 930, 786 N.E.2d 188, 201 Ill.2d 577.—Perj 11(2).

Ill.App. 2 Dist. 2000. Evidence is “material,” for purposes of Brady disclosure requirements, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—People v. Vasquez, 245 Ill.Dec. 856, 728 N.E.2d 1213, 313 Ill.App.3d 82, appeal denied 250 Ill.Dec. 465, 738 N.E.2d 934, 191 Ill.2d 557.—Crim Law 700(2.1).

Ill.App. 2 Dist. 1994. Violation of rule requiring state to disclose exculpatory material information to defense counsel does not require new trial unless defendant demonstrates that undisclosed information was “material,” that is, there was probability sufficient to undermine confidence in outcome such that, had information been disclosed, verdict would have been different. U.S.C.A. Const.Amends. 5, 14; Sup.Ct.Rules, Rule 412(c).—People v. Preatty, 194 Ill.Dec. 557, 627 N.E.2d 1199, 256 Ill.App.3d 579.—Crim Law 700(2.1).

Ill.App. 2 Dist. 1993. Undisclosed evidence would be considered “material” only if its suppression undermines confidence in outcome of trial and if there is reasonable probability that, had evidence been disclosed to defense, results of proceeding would have been different.—People v. Franzen, 190 Ill.Dec. 847, 622 N.E.2d 877, 251 Ill.App.3d 813, appeal denied 197 Ill.Dec. 490, 631 N.E.2d 712, 154 Ill.2d 564.—Crim Law 629(1).

Ill.App. 2 Dist. 1992. Information is “material,” for purposes of action brought under Consumer Fraud Act, if it relates to matter upon which party could be expected to rely in deciding whether to engage in conduct on question. S.H.A. ch. 121½, ¶ 262.—Sohaey v. Van Cura, 180 Ill.Dec. 359, 607 N.E.2d 253, 240 Ill.App.3d 266, appeal allowed 186 Ill.Dec. 394, 616 N.E.2d 347, 151 Ill.2d 577, affirmed and remanded 199 Ill.Dec. 654, 634 N.E.2d 707, 158 Ill.2d 375, on remand 225 Ill.Dec. 281, 683 N.E.2d 225, 262 Ill.App.3d 1126.—Cons Prot 4.

Ill.App. 2 Dist. 1992. Evidence is “relevant” or “material” if it tends to prove fact in controversy or makes contested matter more or less probable.—Kniceley v. Migala, 177 Ill.Dec. 773, 603 N.E.2d 843, 237 Ill.App.3d 72, vacated 182 Ill.Dec. 576, 609 N.E.2d 1391, 149 Ill.2d 650, on remand 193 Ill.Dec. 205, 626 N.E.2d 238, 272 Ill.App.3d 427, appeal

denied 205 Ill.Dec. 166, 642 N.E.2d 1283, 157 Ill.2d 503.—Evid 99, 143.

Ill.App. 2 Dist. 1992. Fact is “material” for purpose of the Consumer Fraud and Deceptive Business Practices Act (CFDBPA) if other party would have acted differently had he or she been aware of it. S.H.A. ch. 121½, ¶ 262.—Totz v. Continental Du Page Acura, 177 Ill.Dec. 202, 602 N.E.2d 1374, 236 Ill.App.3d 891.—Cons Prot 4.

Ill.App. 2 Dist. 1989. Consequence is “material,” for purposes of determining whether defense counsel has duty to discuss consequence with defendant before guilty plea, if, under all of the circumstances including both severity and likelihood of the consequence, it is one that may affect client’s decision to plead guilty. U.S.C.A. Const.Amend. 6.—People v. Miranda, 133 Ill.Dec. 142, 540 N.E.2d 1008, 184 Ill.App.3d 718, appeal denied 136 Ill.Dec. 599, 545 N.E.2d 123, 127 Ill.2d 631.—Crim Law 641.13(5).

Ill.App. 2 Dist. 1987. Concealed fact is “material,” if defrauded party would have acted differently after being aware of fact.—Buechin v. Ogden Chrysler-Plymouth, Inc., 111 Ill.Dec. 35, 511 N.E.2d 1330, 159 Ill.App.3d 237.—Fraud 18.

Ill.App. 2 Dist. 1987. Fact is “material” to claim in issue for purposes of summary judgment motion when successive claim is dependent upon existence of that fact.—Lindenmier v. City of Rockford, 108 Ill.Dec. 624, 508 N.E.2d 1201, 156 Ill.App.3d 76.—Judgm 181(2).

Ill.App. 2 Dist. 1987. Misrepresentation is “material” if it is such that had other party been aware of it, he would have acted differently.—Brown v. Broadway Perryville Lumber Co., 108 Ill.Dec. 593, 508 N.E.2d 1170, 156 Ill.App.3d 16.—Fraud 18.

Ill.App. 2 Dist. 1984. Evidence offered to prove a proposition which is matter in issue or which is probative of matter in issue is “material.”—People v. Saunders, 78 Ill.Dec. 172, 461 N.E.2d 1006, 122 Ill.App.3d 922.—Crim Law 382.

Ill.App. 2 Dist. 1979. Any evidence that is offered to prove proposition that is matter of controversy in case or is of probative value to contested issue is “material.”—Joynt v. Barnes, 27 Ill.Dec. 249, 388 N.E.2d 1298, 71 Ill.App.3d 187.—Evid 143.

Ill.App. 2 Dist. 1974. Where evidence is offered to prove a proposition which is a matter in issue or is probative of matter in issue the evidence is “material.”—Migliore v. Winnebago County, 321 N.E.2d 476, 24 Ill.App.3d 799.—Evid 143.

Ill.App. 3 Dist. 1992. Misrepresentation is “material” under Consumer Fraud Act if it relates to matter upon which plaintiff could be expected to rely in determining to engage in conduct in question. S.H.A. ch. 121½, ¶ 262.—Affrunti v. Village Ford Sales, Inc., 174 Ill.Dec. 30, 597 N.E.2d 1242, 232 Ill.App.3d 704.—Cons Prot 1.

Ill.App. 3 Dist. 1991. Evidence is “material,” for purposes of determining whether it must be disclosed to defendant, only if there is reasonable probability that had evidence been disclosed, result

of proceeding would have been different; undisclosed evidence must be evaluated in context of entire record to determine if it creates reasonable doubt that did not otherwise exist. U.S.C.A. Const. Amends. 5, 14.—People v. Black, 152 Ill.Dec. 476, 566 N.E.2d 4, 207 Ill.App.3d 304.—Crim Law 700(2.1).

Ill.App. 4 Dist. 1996. Prosecutor violates due process rights of accused when state, notwithstanding specific defense request for production of evidence, fails to disclose evidence that is “material” to suspect’s guilt or innocence; evidence is material when it would tend to raise reasonable doubt of defendant’s guilt. U.S.C.A. Const.Amend. 14.—People v. Williams, 220 Ill.Dec. 748, 673 N.E.2d 1169, 285 Ill.App.3d 394, appeal denied 223 Ill.Dec. 200, 679 N.E.2d 385, 172 Ill.2d 566.—Const Law 268(5).

Ill.App. 4 Dist. 1993. Evidence offered to prove proposition which is in issue or which is probative of matter in issue is “material.”—Yamnitz v. William J. Diestelhorst Co., Inc., 190 Ill.Dec. 593, 621 N.E.2d 1046, 251 Ill.App.3d 244.—Evid 143.

Ill.App. 4 Dist. 1993. Contract condition is not “material” for purposes of determining whether rescission is necessary based on mutual mistake unless condition is essential to one of the parties and is mutually agreed upon and understood by parties.—Stewart v. Thrasher, 182 Ill.Dec. 930, 610 N.E.2d 799, 242 Ill.App.3d 10.—Contracts 93(5).

Ill.App. 4 Dist. 1940. Where affidavits of pedestrian and his attorneys disclosed that search for witnesses had been made for many days before trial in unsuccessful attempt to find eyewitness to accident, and that after trial, which resulted in directed verdict for company which owned bus that struck pedestrian, such a witness was found, and witness’ affidavit disclosed that he would testify to certain facts which had not been disclosed at trial, including facts concerning conduct of pedestrian after he started to cross street until he was struck, and fact that the witness heard no signal given by bus driver, pedestrian was entitled to new trial for “newly discovered evidence”, since there was sufficient showing of “diligence” and the new evidence was “material” and was not “cumulative.”—Knight v. Citizens Coach Co., 30 N.E.2d 180, 307 Ill.App. 251.—New Tr 99.

Ill.App. 5 Dist. 1995. Evidence must be material to be admissible; evidence is “material” when it is offered to prove proposition which is in issue or is probative of matter in issue.—Banovz v. Rantanen, 208 Ill.Dec. 617, 649 N.E.2d 977, 271 Ill.App.3d 910, appeal denied 212 Ill.Dec. 415, 657 N.E.2d 616, 163 Ill.2d 548.—Evid 143.

Ind. 2002. Evidence is “material” for *Brady* purposes only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different.—Saylor v. State, 765 N.E.2d 535.—Crim Law 700(2.1).

Ind. 2001. Information sought from State by petitioner for post-conviction relief, regarding trial

witness' relationship with FBI special agent, was not "material" to a reliable outcome in the post-conviction proceeding, as element of *Brady* due process right to disclosure of exculpatory evidence; evidence of witness' alleged cooperation with law enforcement would not have added much to defense counsel's thorough cross-examination at the murder trial, which impeached witness' testimony that he had seen petitioner with the murder weapon and that petitioner had said petitioner "did some damage with it." U.S.C.A. Const.Amend. 14.—*Ben-Yisrayl v. State*, 753 N.E.2d 649, rehearing denied, certiorari denied 122 S.Ct. 2382, 536 U.S. 918, 153 L.Ed.2d 201.—Crim Law 1590.

Ind. 2001. Evidence was "material," as element of the *Brady* due process right to the disclosure of exculpatory evidence, only if there was a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—*Ben-Yisrayl v. State*, 753 N.E.2d 649, rehearing denied, certiorari denied 122 S.Ct. 2382, 536 U.S. 918, 153 L.Ed.2d 201.—Const Law 268(5).

Ind. 2000. Evidence is "material" for *Brady* purposes only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Noojin v. State*, 730 N.E.2d 672.—Crim Law 700(2.1).

Ind. 1999. Evidence is "material" under *Brady* only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different, "reasonable probability" being defined as probability sufficient to undermine confidence in outcome.—*Williams v. State*, 714 N.E.2d 644, certiorari denied 120 S.Ct. 1195, 528 U.S. 1170, 145 L.Ed.2d 1099.—Crim Law 700(2.1).

Ind. 1998. Evidence is "material" for *Brady* purposes only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Minnick v. State*, 698 N.E.2d 745, rehearing denied, rehearing denied 705 N.E.2d 179, certiorari denied 120 S.Ct. 501, 528 U.S. 1006, 145 L.Ed.2d 387.—Crim Law 700(2.1).

Ind. 1998. Evidence is "material" for *Brady* purposes only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Denney v. State*, 695 N.E.2d 90.—Crim Law 700(2.1).

Ind. 1998. Evidence in possession of prosecution is "material," and therefore subject to affirmative duty of disclosure, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Johnson v. State*, 693 N.E.2d 941, rehearing denied.—Crim Law 700(2.1).

Ind. 1998. Item requested by defendant is "material," and thus may be proper subject of discovery, if it appears that it might benefit preparation of defendant's case. Trial Procedure Rule 26.—In re WTHR-TV, 693 N.E.2d 1.—Crim Law 627.5(1).

Ind. 1976. A fact is "material" for purposes of summary judgment if it tends to facilitate resolution of any of the issues either for or against the party having the burden of proof on that issue. Rule TR. 56.—*Brandon v. State*, 340 N.E.2d 756, 264 Ind. 177.—Judgm 181(2).

Ind. 1950. In action by contractor to foreclose mechanics' lien, cost of furnishing ice on job either for purpose of furnishing drinking water to laborers or for use of testing cold storage room in construction, was not "labor" nor "material", under mechanics' lien statute. Burns' Ann.St. § 43-701.—*Mann v. Schnarr*, 95 N.E.2d 138, 228 Ind. 654.—Mech Liens 47.

Ind. 1950. Cost for workmen's compensation insurance, employment compensation payments, social security tax, and contractor's gross income tax to state were neither "labor" nor "material" within mechanic's lien statute. Burns' Ann.St. § 43-701.—*Mann v. Schnarr*, 95 N.E.2d 138, 228 Ind. 654.—Mech Liens 35, 45.

Ind. 1950. Cost of electric current for furnishing light for workmen was not a "material" within mechanics' lien statute. Burns' Ann.St. § 43-701.—*Mann v. Schnarr*, 95 N.E.2d 138, 228 Ind. 654.—Mech Liens 47.

Ind. 1950. Cost of water if used for drinking purposes was not "labor" within mechanics' lien statute, but if water was used for mixing cement or mortar it was properly a part of "material" cost within mechanics' lien statute. Burns' Ann.St. § 43-701.—*Mann v. Schnarr*, 95 N.E.2d 138, 228 Ind. 654.—Mech Liens 47.

Ind. 1950. Rent of 200 pounds of burlap, if used for curing cement, would be a direct operating cost but neither "labor" nor "material" within mechanics' lien statute. Burns' Ann.St. § 43-701.—*Mann v. Schnarr*, 95 N.E.2d 138, 228 Ind. 654.—Mech Liens 47.

Ind. 1950. The purchase price of a broom fell within classification of small tools which contractor should furnish as part of his services and was not a "material" within mechanics' lien statute. Burns' Ann.St. § 43-701.—*Mann v. Schnarr*, 95 N.E.2d 138, 228 Ind. 654.—Mech Liens 47.

Ind. 1950. A padlock used by a contractor in the construction of a building, if chained permanently to building so as to become a part of realty, could be a "material" within mechanics' lien statute. Burns' Ann.St. § 43-701.—*Mann v. Schnarr*, 95 N.E.2d 138, 228 Ind. 654.—Mech Liens 45.

Ind.App. 2002. For summary judgment purposes, facts are "material" if they bear on the ultimate resolution of relevant issues. Trial Procedure Rule 56.—*Kreighbaum v. First Nat. Bank & Trust*, 776 N.E.2d 413.—Judgm 181(2).

Ind.App. 2002. A factual issue is "material" for purposes of summary judgment if it bears on the ultimate resolution of a relevant issue. Trial Procedure Rule 56(C).—*Blackwell v. Dykes Funeral Homes, Inc.*, 771 N.E.2d 692, rehearing denied, and transfer denied.—Judgm 181(2).

Ind.App. 2001. Under *Brady*, evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*Williams v. State*, 757 N.E.2d 1048, transfer denied 774 N.E.2d 506.—Crim Law 700(2.1).

Ind.App. 2001. In applying the summary judgment standard, a fact is “material” if it helps prove or disprove an essential element of the plaintiff’s cause. Trial Procedure Rule 56.—*Eichenberger v. Eichenberger*, 743 N.E.2d 370.—Judgm 181(2).

Ind.App. 2000. Under the objective test for determining the materiality of information to a transaction, which must be disclosed to an investor pursuant to the State Securities Act, court must determine whether a reasonable investor would consider the omitted fact material; to be “material,” in this context, there must be a substantial likelihood that the disclosure of the misstatement or the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of the information made available. West’s A.I.C. 23–2–1–12(2).—*Carroll v. J.J.B. Hilliard, W.L. Lyons, Inc.*, 738 N.E.2d 1069, transfer denied 761 N.E.2d 411.—Sec Reg 278.

Ind.App. 2000. To support a claim of prosecutorial misconduct based upon the withholding of potentially exculpatory evidence, the evidence withheld must be “material” to the defense, in that the defendant must show that the evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.—*Penley v. State*, 734 N.E.2d 287.—Crim Law 700(2.1).

Ind.App. 2000. A fact is “material,” so that a genuine issue as to that fact will preclude summary judgment, if it facilitates the resolution of any of the issues involved. Trial Procedure Rule 56(C).—*Southport Little League v. Vaughan*, 734 N.E.2d 261, transfer denied 753 N.E.2d 5.—Judgm 181(2).

Ind.App. 2000. A material misrepresentation or omission of fact in an insurance application, relied upon by the insurer in issuing the policy, renders the coverage voidable at the insurance company’s option; misrepresentation or omission in an insurance application is “material” if knowledge of the truth would have caused the insurer to refuse the risk.—*Jesse v. American Community Mut. Ins. Co.*, 725 N.E.2d 420, transfer denied 735 N.E.2d 238.—Insurance 2955, 2958.

Ind.App. 1999. A fact is “material” for summary judgment purposes if it helps to prove or disprove an essential element of the plaintiff’s cause of action. Trial Procedure Rule 56.—*Indianapolis Podiatry, P.C. v. Efroymsen*, 720 N.E.2d 376, transfer denied 735 N.E.2d 230.—Judgm 181(2).

Ind.App. 1999. Evidence is “material” under *Brady* rule only if there is reasonable probability that, had it been disclosed to defense, result of proceeding would have been different.—*Sangslund v. State*, 715 N.E.2d 875, transfer denied 726 N.E.2d 309.—Crim Law 700(2.1).

Ind.App. 1999. Fact is “material” for summary judgment purposes if it helps to prove or disprove an essential element of the plaintiff’s cause of action. Trial Procedure Rule 56(C).—*County Line Towing, Inc. v. Cincinnati Ins. Co.*, 714 N.E.2d 285, transfer denied 735 N.E.2d 219.—Judgm 181(2).

Ind.App. 1999. A representation is “material” if the fact omitted or misstated, if truly stated, might reasonably have influenced the insurer in deciding whether to reject or accept the risk or charge a higher premium.—*Fricke v. Gray*, 705 N.E.2d 1027, rehearing denied 711 N.E.2d 1287, transfer denied 726 N.E.2d 304.—Insurance 2958.

Ind.App. 1998. Insured’s misrepresentation on a policy application is “material,” so as to void the contract, if the fact omitted or misstated, if truly stated, might reasonably have influenced the insurer in deciding whether to reject or accept the risk or charge a higher premium. West’s A.I.C. 27–8–5–5(c).—*Ruhlig v. American Community Mut. Ins. Co.*, 696 N.E.2d 877.—Insurance 2958.

Ind.App. 1998. Middle-aged smoker made “material” misrepresentations in her application for medical insurance by failing to disclose in her responses to questions about medical history and general health that she had been diagnosed with chronic obstructive pulmonary disease (COPD), pulmonary fibrosis, and lumbar disc disease, had been prescribed several medications, and had seen physicians, where the insurer’s underwriting manual and an underwriter’s affidavit established that the policy would not have been issued had she responded truthfully; thus, the insurer could rescind the policy. West’s A.I.C. 27–8–5–5(c).—*Ruhlig v. American Community Mut. Ins. Co.*, 696 N.E.2d 877.—Insurance 3003(4), 3003(6), 3003(11).

Ind.App. 1997. Evidence is “material,” and prosecution has duty to disclose such evidence under *Brady*, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; question is not whether defendant would more likely than not have received different verdict with evidence, but whether in its absence he received fair trial, understood as a verdict worthy of confidence. U.S.C.A. Const.Amend. 14.—*Turner v. State*, 684 N.E.2d 564, transfer denied 690 N.E.2d 1187.—Crim Law 700(2.1).

Ind.App. 1996. Fact is “material,” for summary judgment purposes, if it facilitates resolution of any issue.—*Miller Brewing Co. v. Bartholomew County Beverage Co., Inc.*, 674 N.E.2d 193, transfer denied *Miller Brewing v. Bartholomew Cty. Beverage*, 683 N.E.2d 592.—Judgm 181(2).

Ind.App. 1996. Fact is “material,” and genuine issue as to fact will preclude summary judgment, if it is dispositive of litigation. Trial Procedure Rule 56(C).—*Conwell v. Beatty*, 667 N.E.2d 768, rehearing denied.—Judgm 181(2).

Ind.App. 1996. Fact is “material,” for purposes of summary judgment, if its resolution is decisive of either plaintiff’s action or of relevant secondary issue. Trial Procedure Rule 56(C).—*Spears v.*

Blackwell, 666 N.E.2d 974, rehearing denied, transfer denied 683 N.E.2d 581.—Judgm 181(2).

Ind.App. 1996. Fact is “material,” for purposes of summary judgment, when its existence facilitates resolution of issue in case. Trial Procedure Rule 56(C, H).—American Management, Inc. v. MIF Realty, L.P., 666 N.E.2d 424.—Judgm 181(2).

Ind.App. 1996. Fact is “material,” for summary judgment purposes, if it bears on ultimate resolution of relevant issues.—Yin v. Society Nat. Bank Indiana, 665 N.E.2d 58, rehearing denied, transfer denied 683 N.E.2d 581.—Judgm 181(2).

Ind.App. 1996. Fact is “material” for summary judgment purposes if it helps to prove or disprove essential element of plaintiff's cause of action.—Weida v. Dowden, 664 N.E.2d 742, transfer granted, and order of transfer vacated, transfer denied 726 N.E.2d 307.—Judgm 181(2).

Ind.App. 1996. Constitutional error occurs, and conviction must be reversed, only if evidence which state fails to disclose to defendant upon request is “material” in sense that its suppression undermines confidence in outcome of trial; evidence is “material” only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—Houser v. State, 661 N.E.2d 1213, rehearing denied.—Crim Law 627.8(6).

Ind.App. 1995. A fact is “material” for summary judgment purposes if it helps to prove or disprove an essential element of plaintiff's cause of action. Trial Procedure Rule 56(C).—Schrum v. Moskaluk, 655 N.E.2d 561, transfer denied.—Judgm 181(2).

Ind.App. 1995. For summary judgment purposes, fact is “material” if it facilitates resolution of any issue involved.—Board of Com'rs of Steuben County v. Angulo, 655 N.E.2d 512.—Judgm 181(2).

Ind.App. 1995. Fact is “material” for summary judgment purposes if it helps prove or disprove essential element of plaintiff's cause of action. Trial Procedure Rule 56(C).—Ramirez v. American Family Mut. Ins. Co., 652 N.E.2d 511.—Judgm 181(2).

Ind.App. 3 Dist. 1994. Fact is “material” so as to preclude summary judgment if its existence facilitates resolution of issue involved. Trial Procedure Rule 56(C).—Landau v. Bailey, 629 N.E.2d 264, rehearing denied.—Judgm 181(2).

Ind.App. 1 Dist. 1993. Summary judgment is appropriate only when no genuine issue of material fact exists and moving party is entitled to judgment as matter of law, and fact is “material” if it facilitates resolution of any issues involved.—State Street Duffy's, Inc. v. Loyd, 623 N.E.2d 1099, transfer denied.—Judgm 181(2).

Ind.App. 1 Dist. 1993. Evidence is “material” if it may be dispositive of litigation or relevant secondary issue.—Cullison v. Medley, 619 N.E.2d 937, rehearing denied, and transfer denied.—Evid 143.

Ind.App. 4 Dist. 1993. Fact is “material” for summary judgment purposes if it helps to prove or disprove essential element of plaintiff's cause of action.—Graham v. Vasil Management Co., Inc., 618 N.E.2d 1349, rehearing denied.—Judgm 181(2).

Ind.App. 4 Dist. 1993. Insurance application misrepresentation is “material” if fact omitted or misstated, if truly stated, might have reasonably influenced insurer's decision whether to issue policy or to charge higher premium.—Curtis v. American Community Mut. Ins. Co., 610 N.E.2d 871.—Insurance 2958.

Ind.App. 4 Dist. 1992. Fact is “material” for summary judgment purposes if it helps to prove or disprove essential element of plaintiff's cause of action.—Slay v. Marion County Sheriff's Dept., 603 N.E.2d 877, transfer denied.—Judgm 181(2).

Ind.App. 2 Dist. 1992. Fact is “material” for summary judgment purposes if it helps to prove or disprove essential element of plaintiff's cause of action.—Delph v. Town Council of Town of Fishers, 596 N.E.2d 294.—Judgm 181(2).

Ind.App. 5 Dist. 1992. Evidence is “relevant” only if it is material and has probative value, and it is “material” only if it is offered to prove matter in issue.—Pedrick v. State, 593 N.E.2d 1213, rehearing denied.—Crim Law 338(1).

Ind.App. 3 Dist. 1992. Fact is “material” for purposes of summary judgment if it facilitates resolution of any issues involved in case. Trial Procedure Rule 56(C, E).—York v. Union Carbide Corp., 586 N.E.2d 861.—Judgm 181(2).

Ind.App. 3 Dist. 1992. Summary judgment is appropriate when there are no genuine issues of material fact and moving party is entitled to judgment as matter of law; disputed fact is “material” if its existence facilitates resolution of any of the issues involved.—Jackson v. Indiana State Lottery Com'n, 585 N.E.2d 276, rehearing denied, and transfer denied.—Judgm 181(2), 181(3).

Ind.App. 1 Dist. 1991. Under Minnesota law, vendor's misrepresentations as to profitability of resort were “material,” for purpose of establishing purchasers' fraud claim.—Homer v. Guzulaitis, 567 N.E.2d 153, transfer denied.—Fraud 18.

Ind.App. 3 Dist. 1991. Fact is “material,” for summary judgment purposes, if it bears on ultimate resolution of relevant issues after considering all matters in light most favorable to nonmoving party.—Fortmeyer v. Summit Bank, 565 N.E.2d 1118.—Judgm 181(2).

Ind.App. 3 Dist. 1990. Representation in insurance application is “material” if fact omitted or misstated, if truly stated, might reasonably have influenced insurer in deciding whether to reject or accept risk or charge higher premium.—Watson v. Golden Rule Ins. Co., 564 N.E.2d 302.—Insurance 2958.

Ind.App. 1 Dist. 1989. To be “material,” for purposes of establishing right to compulsory process, witness' testimony must be sufficient to create reasonable doubt about verdict which, based on

entire record, is already of questionable validity. U.S.C.A. Const.Amend. 6.—*Hunt v. State*, 546 N.E.2d 1249, transfer denied.—*Witn* 2(1).

Ind.App. 2 Dist. 1989. Misrepresentation on application for accident and sickness policy is “material” such that policy may be avoided if fact or facts misrepresented reasonably enter into and influence insurer’s decision whether to issue policy or to charge higher premium, regardless of whether misrepresentation was innocently made or made with fraudulent intent. IC 1971, 27–8–5–5(c).—*Bush v. Washington Nat. Ins. Co.*, 534 N.E.2d 1139, transfer denied.—*Insurance* 3003(4), 3004.

Ind.App. 1 Dist. 1988. Allegedly perjured statement is “material” if it is reasonably calculated to mislead investigation or it has natural effect or tendency to impede, influence, or dissuade grand jury from pursuing its investigation. IC 35–44–2–1 (1982 Ed.).—*State v. Fields*, 527 N.E.2d 218.—*Perj* 11(7).

Ind.App. 2 Dist. 1986. Representation in insurance application is “material,” where fact represented reasonably enters into and influences insurer’s decision whether to issue policy or charge higher premium.—*Bush v. Mayerstein-Burnell Financial Services, Inc.*, 499 N.E.2d 755.—*Insurance* 2958.

Ind.App. 4 Dist. 1985. For purposes of summary judgment, a fact is “material” if it facilitates resolution of any of the issues involved. Trial Procedure Rule 56.—*Penwell v. Western & Southern Life Ins. Co.*, 474 N.E.2d 1042.—*Judgm* 181(2).

Ind.App. 3 Dist. 1984. For purposes of evaluating summary judgment motion, fact is said to be “material” when its existence facilitates resolution of any of issues involved. Trial Procedure Rule 56.—*Dedelow v. Rudd Equipment Corp.*, 469 N.E.2d 1206.—*Judgm* 181(2).

Ind.App. 1 Dist. 1983. Fact is “material” for purposes of summary judgment if it tends to facilitate resolution of any of the issues either for or against party having burden of proof on that issue.—*Indiana University Hospitals v. Carter*, 456 N.E.2d 1051.—*Judgm* 181(2).

Ind.App. 4 Dist. 1983. Fact is “material,” for summary judgment purposes, if its resolution is decisive of action or relevant secondary issue. Trial Procedure Rule 56.—*Grimm v. F.D. Borkholder Co., Inc.*, 454 N.E.2d 84.—*Judgm* 181(2).

Ind.App. 1 Dist. 1983. Evidence is “relevant” when it logically tends to prove material fact, and “material” when it tends to prove or disprove fact relating to issue in lawsuit.—*Shaffer v. State*, 453 N.E.2d 1182.—*Crim Law* 338(1), 382.

Ind.App. 1 Dist. 1979. For purpose of motion for summary judgment, factual issue is “material” if it bears on ultimate resolution of relevant issues, while factual issue is “genuine” if it is not capable of being conclusively foreclosed by reference to undisputed facts. Rule TR. 56(C).—*Stuteville v. Downing*, 391 N.E.2d 629, 181 Ind.App. 197.—*Judgm* 181(2).

Ind.App. 3 Dist. 1979. Fact is “material” for purposes of summary judgment if it facilitates resolution of any of the issues either for or against the party having burden of proof on that issue. Rule TR. 56(C).—*Richards v. Goerg Boat and Motors, Inc.*, 384 N.E.2d 1084, 179 Ind.App. 102.—*Judgm* 181(2).

Ind.App. 3 Dist. 1977. Fact is “material” for purposes of summary judgment only if it tends to facilitate resolution of any of the factual issues either for or against the party having burden of proof on those issues.—*Goethals v. DeVos*, 366 N.E.2d 673, 174 Ind.App. 143.—*Judgm* 181(2).

Ind.App. 1 Dist. 1975. Participant-informer is almost always a “material” witness for purpose of rule casting heavy burden on prosecution to avoid or adequately justify premature disposal of material evidence.—*Ortez v. State*, 333 N.E.2d 838, 165 Ind.App. 678.—*Crim Law* 666(1).

Ind.App. 2 Div. 1967. To be “material,” evidence sought by a question must tend to prove or disprove a fact relating to an issue in the lawsuit.—*Azimow’s Estate v. Azimow*, 230 N.E.2d 450, 141 Ind.App. 529.—*Evid* 143.

Ind.App. 1897. The term “material,” as used in a statute giving a mechanic’s lien for material furnished in the construction of a building, etc., should be construed to include the parts of a large tank which plaintiff shipped at his factory to defendant’s land, and which were there put together with oakum, pitch, and hoops.—*Parker Land & Improvement Co. v. Reddick*, 47 N.E. 848, 18 Ind.App. 616.

Ind.Tax 1995. Plain, ordinary, and usual meaning of “material,” in regulation explaining statute exempting from use tax property acquired for incorporation as material part of other tangible personal property, is important, or more or less necessary. West’s A.I.C. 6–2.5–5–6; Ind.Adm. Code title 45, § 2.2–5–14(2).—*Miles, Inc. v. Indiana Dept. of State Revenue*, 659 N.E.2d 1158, rehearing granted in part 670 N.E.2d 143.—*Tax* 1245.

Iowa 2002. A fact is “material,” for summary judgment purposes, only if it is outcome determinative.—*Meade v. Ries*, 642 N.W.2d 237.—*Judgm* 181(2).

Iowa 2001. Factual issue is “material,” for summary judgment purposes, only if dispute is over facts that might affect outcome of suit.—*Phillips v. Covenant Clinic*, 625 N.W.2d 714.—*Judgm* 181(2).

Iowa 2000. Statement of fact is “material,” for purposes of perjury statute, if: (1) it supports or attacks the credibility of a witness, or (2) has a legitimate tendency to prove or disprove some relevant fact irrespective of the main fact at issue, or (3) is capable of influencing the court, officer, tribunal or other body created by law on any proper matter of inquiry. I.C.A. § 720.2.—*State v. Hawkins*, 620 N.W.2d 256.—*Perj* 11(2).

Iowa 2000. A fact is “material,” so that genuine issue as to fact will preclude summary judgment, only when its determination might affect the outcome of the suit. Rules Civ.Proc., Rule 237(c).—

Keokuk Junction Ry. Co. v. IES Industries, Inc., 618 N.W.2d 352.—Judgm 181(2).

Iowa 1999. Evidence is “material,” for purposes of remanding case to supplement record on appeal from decision of administrative agency, if it is reasonably capable of influencing an agency’s decision.—Humboldt Community Schools v. Fleming, 603 N.W.2d 759.—Admin Law 817.1.

Iowa 1999. When the dispute is over facts that might affect the outcome of the suit under the applicable law, the issue is “material,” for purposes of summary judgment requirement that there be no genuine issue of material fact. Rules Civ.Proc., Rule 237(c).—Financial Marketing Services, Inc. v. Hawkeye Bank & Trust of Des Moines, 588 N.W.2d 450.—Judgm 181(2).

Iowa 1999. Fact is “material,” for purposes of summary judgment motion, only when its determination might affect the outcome of the suit. Rules Civ.Proc., Rule 237(c).—Baratta v. Polk County Health Services, 588 N.W.2d 107.—Judgm 181(2).

Iowa 1997. Evidence is “material,” for purposes of *Brady* rule, when there is reasonable probability that disclosure would have changed result of proceeding; defendant can establish “reasonable probability” of different result by showing that suppression undermines confidence in outcome of trial.—State v. Veal, 564 N.W.2d 797, denial of habeas corpus affirmed *Veal v. Iowa Correctional Institute for Women*, 274 F.3d 479, rehearing denied, certiorari denied 123 S.Ct. 142, 154 L.Ed.2d 51.—Crim Law 700(2.1).

Iowa 1996. Issue of fact is “material,” and may preclude summary judgment, only when dispute is over facts that might affect outcome of litigation, given applicable governing law.—Smith v. CRST Intern., Inc., 553 N.W.2d 890.—Judgm 181(2).

Iowa 1996. Issue of fact is “material,” thereby precluding summary judgment, only when dispute is over facts that might affect outcome of litigation, given applicable governing law. Rules Civ.Proc., Rule 237.—Dickerson v. Mertz, 547 N.W.2d 208.—Judgm 181(2).

Iowa 1996. Whether nondisclosed evidence was “material,” for purpose of *Brady v. Maryland*, depends on whether there is reasonable probability that result of proceeding would have been different; “reasonable probability” of different result is shown when government’s evidentiary suppression undermined confidence in outcome of trial.—State v. Romeo, 542 N.W.2d 543.—Crim Law 700(2.1).

Iowa 1996. It was not “material” to falsifying records prosecution that prosecutor told State’s witness in tape recorded conversation that he would not be charged as habitual offender if he provided requested information, and thus, prosecution did not violate *Brady v. Maryland* by failing to produce tape recording of that conversation; jury was aware that witness agreed to testify in exchange for 300 years of charges being dropped, defense counsel cross-examined witness on that point at trial, and defense counsel’s knowledge of habitual offender agreement would not have changed his trial prepa-

ration or strategy.—State v. Romeo, 542 N.W.2d 543.—Crim Law 700(4).

Iowa 1996. Summary judgment is appropriate if no issue as to any material fact exists and moving party is entitled to judgment as matter of law; issue of fact is “material” only if dispute involves facts which might affect outcome of suit, given applicable governing law.—Des Moines Register and Tribune Co. v. Dwyer, 542 N.W.2d 491.—Judgm 181(2).

Iowa 1995. Gasoline and petroleum products that supplier provided to contractor on construction project, and that contractor used in improving property, did not fall within ordinary meaning of the term “material,” as used in Iowa mechanics’ lien statute; by defining the term “material,” as used in public improvement statutes, to specifically include gasoline and petroleum products, while employing only an ordinary definition of the term “material” under mechanics’ lien statutes, legislature manifested its intent that supplier of gasoline or petroleum products is not entitled to file notice of mechanics’ lien. I.C.A. §§ 572.1, subd. 2, 573.1, subd. 2.—Farmers Co-op. Co. v. DeCoster, 528 N.W.2d 536.—Mech Liens 45.

Iowa 1994. Fact is “material” if it helps to prove proposition in issue. Rules of Evid., Rule 402.—State v. Buck, 510 N.W.2d 850.—Crim Law 382.

Iowa 1992. Issue of fact is “material” for purposes of summary judgment only when dispute is over facts that might affect outcome of suit, given applicable governing law. Rules Civ.Proc., Rule 237(c) (1991).—Fees v. Mutual Fire and Auto. Ins. Co., 490 N.W.2d 55.—Judgm 181(2).

Iowa 1983. Evidence is “material” if it is offered to prove a proposition which is a matter in issue or is probative of the matter in issue.—State v. Brown, 337 N.W.2d 507.—Crim Law 382.

Iowa 1956. “Consortium” at common law included no only conjugal fellowship of husband and wife but also service as a prominent, if not the dominant, factor; this service was not so much the service resulting in the performance of labor or the earning of wages as the service which contributed and assisted in all the relations of domestic life, and this concept of the term was the “material” or “practical” version; there was also the “sentimental version”, accepted in Iowa, of limiting the term to the right which the husband and wife have to each other’s society, comfort, and affection, the conjugal fellowship of husband and wife, and the right of each to the company, cooperation, affection and aid of the other in every conjugal relation.—Acuff v. Schmit, 78 N.W.2d 480, 248 Iowa 272.—Hus & W 209(3), 209(4).

Iowa 1943. Where contract between plumber and co-owner for installation of heating plant provided that payment was to include board, lodging and mileage, such items were lienable under “mechanic’s lien” statute giving lien to every person who furnishes “material” for or performs “labor” on any building. Code 1939, § 10271.—Crane Co.

v. Westerman, 8 N.W.2d 412, 232 Iowa 1394.—Mech Liens 44, 50.

Iowa 1928. “Material,” within statute relating to material on public improvements, means goods furnished for and intended to become part of completed improvement (Code 1924, § 10299).—Aetna Cas. & Sur. Co. of Hartford, Conn. v. Kimball, 222 N.W. 31, 206 Iowa 1251.—High 113(4); Pub Contr 28.

Iowa 1928. “Ordinary meaning” of word “material” in act relating to material for public improvements refers to well-established judicial interpretation (Code 1924, §§ 10299-10323; § 10299, par. 4).—Aetna Cas. & Sur. Co. of Hartford, Conn. v. Kimball, 222 N.W. 31, 206 Iowa 1251.—Statut 199.

Iowa 1927. For purpose of ratification of agent’s act, facts are “material” if knowledge thereof according to ordinary experience is essential to fair and intelligent determination of nature and extent of transaction.—Miller v. Chatsworth Sav. Bank, 212 N.W. 722, 203 Iowa 411.—Princ & A 166(1).

Iowa 1908. Code Supp. 1907, § 3060a14, provides that, where a negotiable instrument is wanting in any “material particular,” the person in possession has prima facie authority to complete it by filling up the blank therein, etc. Held, that the word “material” was not there used as synonymous with “necessary,” so as to restrict the right to filling in an omission essential to the completion of a negotiable instrument, but included all omitted matter usually found in such instruments.—Johnston v. Hoover, 117 N.W. 277, 139 Iowa 143.—Alt of Inst 12; Bills & N 60.

Iowa App. 1997. For purposes of summary judgment, issue of fact is “material” only when dispute is over facts that might affect outcome of suit, given applicable governing law. Rules Civ. Proc., Rule 237(e).—Thornton v. Hubill, Inc., 571 N.W.2d 30.—Judgm 181(2).

Iowa App. 1997. Evidence is “material” for purposes of establishing *Brady* violation only if there is reasonable probability that had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome.—Mark v. State, 568 N.W.2d 820.—Crim Law 700(2.1).

Iowa App. 1987. Issue of fact is “material” only when dispute is over facts that might affect outcome of the suit, given the applicable governing law. Rules Civ.Proc., Rule 237(c).—Hall v. Barrett, 412 N.W.2d 648.—Judgm 181(2).

Kan. 1998. For the purposes of establishing perjury, false testimony relative to a nonexistent issue cannot be “material,” but any statement which is relevant to the matter under investigation is sufficiently material to form the basis of a charge of perjury. K.S.A. 21-3805.—State v. Rollins, 957 P.2d 438, 264 Kan. 466, on remand 975 P.2d 279.—Perj 11(2).

Kan. 1992. Record supported finding that misrepresentations on student loan application forms were “material,” as required to support defendants’ convictions for making false writing; director of financial aid testified that “if there was anything false on the application, the references, any information, then we would not approve [the application].” K.S.A. 21-3711.—State v. Edwards, 826 P.2d 1355, 250 Kan. 320.—Fraud 69(5).

Kan. 1991. Matter is “material” within meaning of Consumer Protection Act’s definition of deceptive practices if matter is one to which reasonable person would attach importance in determining his choice of action in transaction. K.S.A. 50-626(b)(3).—Farrell v. General Motors Corp., 815 P.2d 538, 249 Kan. 231.—Cons Prot 1.

Kan. 1986. Term “material,” within statute [K.S.A. 21-3711] defining crime of false writing as making or drawing any written instrument or entry in a book of account with knowledge that writing falsely states or represents some material matter, is one of common, ordinary understanding and means that a matter is material if it is one to which a reasonable person would attach importance in determining his choice of action.—State v. Roberts-Reid, 714 P.2d 971, 238 Kan. 788.—Fraud 68.

Kan. 1976. The substitution of the word “material” for the word “substantial” in defining the required deviation from standard of care in vehicular homicide statute was, in essence, no change at all. K.S.A. 21-3405.—State v. Gordon, 549 P.2d 886, 219 Kan. 643.—Autos 357.

Kan. 1945. The purchase price, rent, or value of use of machinery, tools and equipment used in constructing railroad bridge is neither “labor”, “material”, “provisions” or “goods” within statute requiring railroad when contracting for construction of its road or any part thereof to take a bond that such contractor shall pay all labor, mechanics and materialmen for such work. Gen.St.1935, 66-215.—American Nat. Bank of Hutchinson v. Central Const. Co., 163 P.2d 369, 160 Kan. 400.—R R 111.

Kan. 1933. Where one of elements in proof of soldier’s compensation claim is residence in Kansas at time of entering United States military service, question as to whether claimant had received compensation from any state or country held sufficiently “material” to constitute basis for charge of perjury. Rev.St.1923, 21-701, 73-101 et seq., as amended.—State v. Whitlock, 27 P.2d 262, 138 Kan. 602.—Perj 11(4).

Kan. 1933. Dealer, selling to customer truck tires, tubes, and rims, and installing them gratis, held not entitled to lien on truck for price of articles, since they are not “material” incidentally used in performance of labor. Rev.St.1923, 58-201.—Rouse v. Paramount Transit Co., 22 P.2d 429, 137 Kan. 858.—Autos 379.

Kan. 1931. Representation relating to matter which is so substantial and important as to influence party to whom made is “material.”—McGuire v. Gunn, 300 P. 654, 133 Kan. 422.—Fraud 18.

Kan. 1925. "Material," within the meaning of mechanic's lien statute (R.S. 60-1401 et seq.), is that which enters into, becomes a part of, and remains with the completed work.—*Road Supply & Metal Co. v. Bechtelheimer*, 240 P. 846, 119 Kan. 560.—*Mech Liens* 45.

Kan.App. 1998. Evidence withheld by state is "material" only if there is reasonable probability that had the evidence been disclosed to defense, result of trial would have been different, and "reasonable probability" is probability sufficient to undermine confidence in outcome of trial.—*State v. Bateson*, 958 P.2d 44, 25 Kan.App.2d 90, review granted, reversed in part 970 P.2d 1000, 266 Kan. 238.—*Crim Law* 700(2.1).

Kan.App. 1998. Breach is "material" if promisee receives something substantially less or different from that for which he bargained.—*Almena State Bank v. Enfield*, 954 P.2d 724, 24 Kan.App.2d 834.—*Contracts* 317.

Kan.App. 1996. Prosecution is required to turn over evidence to defense that witness has received favorable treatment in exchange for his or testimony; however, failure to disclose such information warrants reversal only if it is "material," i.e., there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Matter of J.T.M.*, 922 P.2d 1103, 22 Kan.App.2d 673, review denied.—*Crim Law* 700(4), 1166(10.10).

Kan.App. 1993. In action for fraudulent concealment, matter is "material" if it is one to which reasonable person would attach importance in determination of his choice of action in transaction in question.—*Horsch v. Terminix Intern. Co., Ltd. Partnership*, 865 P.2d 1044, 19 Kan.App.2d 134, review denied.—*Fraud* 18.

Kan.App. 1991. Newly discovered evidence is "material," so as to justify new trial, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*State v. Ayadi*, 830 P.2d 1210, 16 Kan.App.2d 596, review denied.—*Crim Law* 940.

Kan.App. 1982. In an action for fraudulent concealment, matter is "material" if it is one to which a reasonable person would attach importance in determining his choice of action in the transaction in question.—*Lynn v. Taylor*, 642 P.2d 131, 7 Kan.App.2d 369.—*Fraud* 18.

Ky. 1951. A false answer to questions contained in application for life policy is "material" to risk under policy so as to avoid policy if insurer, acting reasonably and naturally in accordance with usual practice of life insurance company under similar circumstances would not have accepted application if substantial truth had been stated. *KRS* 296.160.—*Metropolitan Life Ins. Co. v. Tannenbaum*, 240 S.W.2d 566.—*Insurance* 3001.

Ky. 1940. The term "material" in provision of Inheritance Tax Act that donor's transfer of "material part of his estate" within three years before his death, without adequate valuable consideration, shall be construed prima facie to have been made

in contemplation of death, is relative one, meaning "of solid or weighty character," "substantial", "of consequence", "important", and what is material part of donor's estate is for court to decide from facts of particular case. *Ky.St.* § 4281a-13.—*Chase's Ex'x v. Commonwealth*, 145 S.W.2d 58, 284 Ky. 471.—*Tax* 879(1).

Ky. 1935. Under statute providing that no misrepresentation in application should avoid policy unless material or fraudulent, misstatement to avoid policy must be material misstatement and not merely misstatement on material subject; word "material" meaning substantial, important, or of consequence as distinguished from trivial or minor representation which would affect determination of acceptance or rejection of applicant, as determined from standpoint of the ordinary, honest man. *Ky.St.* § 639.—*Pacific Mut. Life Ins. Co. v. Arnold*, 90 S.W.2d 44, 262 Ky. 267.—*Insurance* 2958.

Ky. 1925. Instruction to acquit if possessed of reasonable doubt as to "material" fact held not prejudicial.—*Ray v. Commonwealth*, 268 S.W. 804, 207 Ky. 96.—*Crim Law* 789(18).

Ky. 1925. Instruction to acquit defendant if possessed of a reasonable doubt as to any "material" fact necessary to establish his guilt, though not in the language of *Cr.Code Prac.* § 238, held not prejudicial, since the word "material" means "of consequence" or "not to be dispensed with."—*Ray v. Commonwealth*, 268 S.W. 804, 207 Ky. 96.

La. 2002. For purposes of ensuring a defendant's due-process rights under *Brady*, suppressed evidence is "material" if its inclusion would establish that there is a reasonable probability that the result of the trial would have been different if the suppressed documents had been disclosed to the defense. *U.S.C.A. Const.Amend.* 14.—*State v. Louviere*, 833 So.2d 885, 2000-2085 (La. 9/4/02), rehearing denied.—*Crim Law* 700(2.1).

La. 2002. Background questionnaire for defendant's employment with police department, in which defendant indicated he had been molested as a child, was not "material" at penalty phase of capital murder trial, as element of *Brady* due-process right to disclosure of material exculpatory evidence, even if prosecution had suggested to jury that evidence of defendant's prior sexual abuse had been concocted to excuse defendant's criminal acts, where defendant otherwise provided extensive evidence to the jury of his alleged sexual abuse as a child, and that other evidence was more compelling than the questionnaire. *U.S.C.A. Const.Amend.* 14.—*State v. Louviere*, 833 So.2d 885, 2000-2085 (La. 9/4/02), rehearing denied.—*Sent & Pun* 1780(2).

La. 2002. Psychological report prepared in connection with defendant's application for employment with police department was not "material" at penalty phase of capital murder trial, as element of *Brady* due-process right to disclosure of material exculpatory evidence; circumstances of the offense and defendant's character and propensities were larger issues than the sexual identity problems and alleged molestation as a child cited in the report,

the evidence was potentially relevant only as to moral culpability but it was not relevant to the mitigating circumstances of mental disease or extreme mental or emotional disturbance at time of the crimes, and defendant could have used his records from his inpatient treatment at psychiatric hospital, which provided the same information bearing on moral culpability as the psychological report, but with greater detail and with intrinsically greater weight. U.S.C.A. Const.Amend. 14; LSA-Cr.P. arts. 905.2, 905.5.—*State v. Louviere*, 833 So.2d 885, 2000-2085 (La. 9/4/02), rehearing denied.—Sent & Pun 1780(2).

La. 2002. Letters that other inmate wrote to defendant while defendant was in jail awaiting his capital murder trial were not “material” at penalty phase of capital murder trial, as element of *Brady* due-process right to disclosure of material exculpatory evidence, though the letters may have refuted inmate’s claim that defendant had raped her when she was his hostage in jail; defense was allowed, despite its discovery contempt in failing to disclose to prosecution other letters written by inmate, to put those other letters into evidence and to use the content of one of the letters to cross-examine inmate. U.S.C.A. Const.Amend. 14.—*State v. Louviere*, 833 So.2d 885, 2000-2085 (La. 9/4/02), rehearing denied.—Sent & Pun 1780(2).

La. 2002. Cumulative effect of prosecution’s alleged failure to disclose or discover background questionnaire and psychological report for defendant’s employment with police department, and letters written to defendant from inmate he held hostage while in jail awaiting trial, was not “material” at penalty phase of capital murder trial, as element of *Brady* due-process right to disclosure of material exculpatory evidence; State advanced a plethora of evidence of defendant’s acts surrounding the murder of bank employee, including the callousness of the murder as well as numerous instances of violence, domination, endangerment, and nefarious sexual exploitation of several of her fellow hostages, and defendant had kidnapped and wounded a deputy in parish jail while awaiting trial. U.S.C.A. Const.Amend. 14.—*State v. Louviere*, 833 So.2d 885, 2000-2085 (La. 9/4/02), rehearing denied.—Sent & Pun 1780(2).

La.App. 1 Cir. 2002. Fact is “material” for purposes of motion for summary judgment when its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery. LSA-C.C.P. art. 966, subd. B.—*Williams v. Storms*, 835 So.2d 755, 2001-2820 (La.App. 1 Cir. 11/8/02).—Judgm 181(2).

La.App. 1 Cir. 2000. A fact is “material,” for purposes of summary judgment, if its existence is essential to the plaintiff’s cause of action under the applicable theory of recovery, and without it the plaintiff could not prevail. LSA-C.C.P. art. 966, subd. B.—*Walker v. Acadian Builders of Gonzales, Inc.*, 797 So.2d 690, 1999-0297 (La.App. 1 Cir. 5/19/00), appeal after remand 835 So.2d 827, 2001-2534 (La.App. 1 Cir. 11/8/02).—Judgm 181(2).

La.App. 1 Cir. 1998. Particular fact in dispute may only be deemed “material” for summary judgment purposes if such facts potentially insure or preclude recovery, affect the litigant’s ultimate success, or determine the outcome of the legal dispute.—*Hicks v. Central Louisiana Elec. Co., Inc.*, 712 So.2d 656, 1997-1232 (La.App. 1 Cir. 5/15/98).—Judgm 181(2).

La.App. 1 Cir. 1997. Fact is “material” if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; thus, material facts are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute.—*Trahan v. Rally’s Hamburgers, Inc.*, 696 So.2d 637, 1996-1837 (La. App. 1 Cir. 6/20/97).—Judgm 181(2).

La.App. 1 Cir. 1997. For summary judgment purposes, fact is “material” if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—*Bellsouth Telecommunications, Inc. v. Industrial Enterprises, Inc.*, 690 So.2d 145, 1996-0682 (La.App. 1 Cir. 2/14/97).—Judgm 181(2).

La.App. 1 Cir. 1996. For summary judgment purposes, fact is “material” if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—*Allain-Lebreton Co. v. Exxon Corp.*, 694 So.2d 296, 951576 (La.App. 1 Cir. 4/4/96).—Judgm 181(2).

La.App. 1 Cir. 1996. Fact is “material,” in deciding summary judgment motion, if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; material facts are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—*Dempsey v. Automotive Cas. Ins.*, 680 So.2d 675, 1995-2108 (La.App. 1 Cir. 6/28/96), rehearing denied.—Judgm 181(2).

La.App. 1 Cir. 1996. For purposes of motion for summary judgment, fact is “material” if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; material facts are those that potentially ensure or preclude recovery, effect litigant’s ultimate success, or determine outcome of legal dispute, and whether or not particular fact in dispute is material can be seen only in light of substantive law applicable to case. (Per Parro, J., with two Judges concurring with reasons.) LSA-C.C.P. art. 966.—*Allen v. Carollo*, 674 So.2d 283, 1995-1840 (La.App. 1 Cir. 4/4/96).—Judgm 181(2).

La.App. 1 Cir. 1996. For purposes of summary judgment motion, fact is “material” if it is essential to plaintiff’s cause of action under applicable theory of recovery and without it plaintiff would not prevail; material facts are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute.—*Frost*

v. David, 673 So.2d 340, 1995-0839 (La.App. 1 Cir. 5/10/96).—Judgm 181(2).

La.App. 1 Cir. 1996. Fact is “material,” so that genuine issue as to fact will preclude summary judgment, if fact is essential to plaintiff’s cause of action under applicable theory of recovery and is one without which plaintiff could not prevail. LSA-C.C.P. art. 966.—Saurage v. Palermo, 672 So.2d 351, 951698 (La.App. 1 Cir. 4/4/96).—Judgm 181(2).

La.App. 1 Cir. 1996. For summary judgment purposes, fact is “material” if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—Amoco Production Co. v. Fina Oil & Chemical Co., 670 So.2d 502, 1995-1185 (La.App. 1 Cir. 2/23/96), rehearing denied, writ denied 673 So.2d 1037, 1996-1024 (La. 5/31/96).—Judgm 181(2).

La.App. 1 Cir. 1996. Fact is “material,” for summary judgment purposes, if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which he could not prevail. LSA-C.C.P. art. 966, subd. B.—Johnson v. Wetherspoon, 669 So.2d 589, 1995-1280 (La.App. 1 Cir. 2/23/96), writ granted 672 So.2d 669, 1996-0744 (La. 5/10/96), affirmed 694 So.2d 203, 1996-0744 (La. 5/20/97), rehearing denied.—Judgm 181(2).

La.App. 1 Cir. 1995. A fact is “material,” for summary judgment purposes, if its existence is essential to plaintiff’s cause of action under applicable theory and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—Middleton v. International Maintenance, 671 So.2d 420, 1995-0238 (La.App. 1 Cir. 10/6/95), writ denied 667 So.2d 523, 1995-2682 (La. 1/12/96).—Judgm 181(2).

La.App. 1 Cir. 1995. Fact is “material” for purposes of summary judgment if it may potentially ensure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Breaux v. Bene, 664 So.2d 1377, 1995-1004 (La.App. 1 Cir. 12/15/95).—Judgm 181(2).

La.App. 1 Cir. 1995. Fact is “material” if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; material facts are those that potentially ensure or preclude recovery, effect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Dunn v. Potomac Ins. Co. of Illinois, 657 So.2d 660, 1994-2202 (La.App. 1 Cir. 6/23/95).—Judgm 181(2).

La.App. 1 Cir. 1994. A fact is “material,” for summary judgment purposes, if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—Houston General Ins. Co. v. Commercial Union Ins. Co., 649 So.2d 776, 1994-0399 (La.App. 1 Cir. 12/22/94), rehearing denied, appeal after remand 682 So.2d 1341, 1996-0379 (La.App. 1 Cir. 11/8/96), writ denied 687 So.2d 409, 1996-2950 (La. 1/31/97).—Judgm 181(2).

La.App. 1 Cir. 1994. Fact is “material” for purposes of summary judgment if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; material facts are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Grezaifi v. Smith, 641 So.2d 210, 1993-1696 (La.App. 1 Cir. 6/24/94), rehearing denied.—Judgm 181(2).

La.App. 1 Cir. 1994. Fact is “material” for purposes of precluding summary judgment if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—Kidd v. Logan M. Killen, Inc., 640 So.2d 616, 1993-1322 (La.App. 1 Cir. 5/20/94), rehearing denied.—Judgm 181(2).

La.App. 1 Cir. 1994. For purpose of summary judgment, fact is “material” if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; “material” facts are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Carnes v. Frank’s Petroleum, Inc., 633 So.2d 1295, 1992-2212 (La.App. 1 Cir. 3/11/94).—Judgm 181(2).

La.App. 1 Cir. 1994. Fact is “material,” for purposes of summary judgment motion, if it is essential to plaintiff’s cause of action under applicable theory of recovery and without it plaintiff could not prevail.—Penton v. Clarkson, 633 So.2d 918, 1993-0657 (La.App. 1 Cir. 3/11/94).—Judgm 181(2).

La.App. 1 Cir. 1993. Fact is “material,” for summary judgment purposes, if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; material facts are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute.—Billiot v. Lovell, 633 So.2d 280, writ denied 634 So.2d 834, 1993-3168 (La. 2/11/94).—Judgm 181(2).

La.App. 1 Cir. 1993. Fact is “material” for summary judgment purposes if it is essential to plaintiff’s cause of action under applicable theory of recovery, that is, material facts are those that potentially insure or determine outcome of legal dispute.—Smith v. Exxon Chemical Americas, 619 So.2d 140.—Judgm 181(2).

La.App. 1 Cir. 1993. Fact is “material” for summary judgment purposes if it is essential to plaintiff’s cause of action under applicable theory of recovery and it is fact without which plaintiff could not prevail; “material facts” are those that potentially insure or preclude recovery, affect of litigant’s ultimate success, or determine outcome of legal dispute.—Cantrelle v. State Farm Gen. Ins. Co., 618 So.2d 997.—Judgm 181(2).

La.App. 1 Cir. 1993. Fact is “material,” for purposes of summary judgment, if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—Central Progressive

Bank v. St. Tammany Parish Sheriff's Office, 618 So.2d 986, writ denied 620 So.2d 851.—Judgm 181(2).

La.App. 1 Cir. 1992. For purposes of summary judgment motion, fact is "material" if it is essential to plaintiff's cause of action under applicable theory of recovery and without which plaintiff could not prevail.—*Smith v. Our Lady of the Lake Hosp., Inc.*, 612 So.2d 816, rehearing denied 624 So.2d 1239, writ granted 632 So.2d 768, 1993-2512 (La. 2/25/94), affirmed in part, reversed in part 639 So.2d 730, 1993-2512 (La. 7/5/94), rehearing denied, appeal after remand 680 So.2d 1163, 1996-1837 (La. 9/27/96), rehearing denied 683 So.2d 258, 1996-1837 (La. 11/8/96).—Judgm 181(2).

La.App. 1 Cir. 1991. Physician's duty to disclose information to patient extends only to risks that are "material"; risk is "material" when reasonable person, in what physician knows or should know to be patient's position, would likely attach significance to risk or cluster of risks in deciding whether to forego proposed therapy. LSA-Const. Art. 1, § 5.—*Boyd v. Louisiana Medical Mut. Ins. Co.*, 593 So.2d 427, writ denied 594 So.2d 877.—Health 906.

La.App. 1 Cir. 1991. For purposes of summary judgment, fact is "material" if it is essential to plaintiff's cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—*Schroeder v. Board of Sup'rs of Louisiana State University*, 577 So.2d 1074, writ granted 581 So.2d 668, reversed 591 So.2d 342, rehearing denied, appeal after remand 653 So.2d 612, 940909, 940910 (La.App. 1 Cir. 3/3/95), rehearing denied, writ denied 660 So.2d 480, 1995-1504 (La. 9/22/95), writ denied 660 So.2d 480, 1995-1509 (La. 9/22/95).—Judgm 181(2).

La.App. 1 Cir. 1981. Where there was not one iota of evidence showing security interest on automobile was ever disclosed to debtor, and since a reasonable consumer would find it significant that his automobile was being used as security, bank's failure to disclose security interest in automobile constituted failure to disclose a "material" fact in violation of Truth in Lending Act. Truth in Lending Act, §§ 102, 125, 15 U.S.C.A. §§ 1601, 1635.—*Baker Bank and Trust Co. v. Matthews*, 401 So.2d 1246.—Cons Cred 56.

La.App. 1 Cir. 1931. Lumber and supplies furnished to contractor and used by him in constructing pile driver held not "material" furnished for use in machine used in construction of road; hence furnisher could not recover on contractor's bond (Act No. 271 of 1926, amending Act No. 224 of 1918).—*General Lumber & Supply Co. v. Hunter*, 134 So. 759, 17 La.App. 71.—High 113(5).

La.App. 2 Cir. 2002. State must disclose all evidence material to guilt or punishment and favorable to accused; evidence is "material" if there is reasonable probability that disclosure of evidence would have produced different result.—*State v. Richardson*, 811 So.2d 154, 35,450 (La.App. 2 Cir. 2/27/02).—Crim Law 700(2.1).

La.App. 2 Cir. 2001. A fact is "material" for summary judgment purposes, if its existence or non-existence may be essential to the plaintiff's cause of action under the applicable theory of recovery. LSA-C.C.P. art. 966.—*Tedeton v. Simpson*, 795 So.2d 451, 34,940 (La.App. 2 Cir. 8/22/01), writ denied 803 So.2d 977, 2001-2576 (La. 12/13/01).—Judgm 181(2).

La.App. 2 Cir. 2001. A fact is "material" for summary judgment purposes, if its existence or non-existence may be essential to the plaintiff's cause of action under the applicable theory of recovery. LSA-C.C.P. art. 966.—*Franklin v. Coleman*, 793 So.2d 467, 34,908 (La.App. 2 Cir. 8/22/01), rehearing denied.—Judgm 181(2).

La.App. 2 Cir. 2001. A fact is "material" for summary judgment purposes if its existence or non-existence may be essential to the plaintiff's cause of action under the applicable theory of recovery.—*Leger v. Louisiana Farm Bureau Mut. Ins. Co.*, 792 So.2d 776, 34,673 (La.App. 2 Cir. 6/20/01), writ denied 801 So.2d 1066, 2001-2135 (La. 11/9/01).—Judgm 181(2).

La.App. 2 Cir. 2001. Evidence is "material" for *Brady* purposes if there is a reasonable probability, sufficient to undermine confidence in outcome, that disclosure of evidence would have produced a different result.—*State v. Black*, 786 So.2d 289, 34,688 (La.App. 2 Cir. 5/9/01), writ denied 815 So.2d 831, 2001-1781 (La. 5/10/02).—Crim Law 700(2.1).

La.App. 2 Cir. 2001. For purposes of determining summary judgment, a fact is "material" when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery; facts are "material" if they potentially insure or preclude recovery, affect a litigant's ultimate success, or determine the outcome of the legal dispute. LSA-C.C.P. art. 966.—*Knowles v. McCright's Pharmacy, Inc.*, 785 So.2d 101, 34,559 (La.App. 2 Cir. 4/4/01).—Judgm 181(2).

La.App. 2 Cir. 2000. A fact is "material," for summary judgment purposes, if its existence or non-existence may be essential to a plaintiff's cause of action under the applicable theory of recovery. LSA-C.C.P. art. 966.—*Provenza v. Central & Southwest Services, Inc.*, 775 So.2d 84, 34,162 (La. App. 2 Cir. 12/15/00).—Judgm 181(2).

La.App. 2 Cir. 2000. A fact is "material," for summary judgment purposes, if its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery.—*Cantrelle v. Whipple*, 771 So.2d 832, 34,044 (La.App. 2 Cir. 11/1/00), writ denied 781 So.2d 561, 2000-3182 (La. 1/12/01).—Judgm 181(2).

La.App. 2 Cir. 2000. A fact is "material," for summary judgment purposes, if its existence or non-existence may be essential to the plaintiff's cause of action under the applicable theory of recovery.—*Rodriguez v. Deen*, 759 So.2d 1032, 33,308 (La. App. 2 Cir. 5/10/00), writ denied 765 So.2d 1049, 2000-1414 (La. 6/23/00).—Judgm 181(2).

La.App. 2 Cir. 1997. Fact is "material," for purposes of summary judgment motion, if its existence

or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery. LSA-C.C.P. art. 966.—*Keith v. Gelco Corp.*, 705 So.2d 244, 30,022 (La.App. 2 Cir. 12/10/97).—Judgm 181(2).

La.App. 2 Cir. 1997. Facts are "material," for purposes of summary judgment motion, if they potentially insure or preclude recovery, affect litigants' ultimate success or determine outcome of legal dispute. LSA-C.C.P. art. 966.—*Keith v. Gelco Corp.*, 705 So.2d 244, 30,022 (La.App. 2 Cir. 12/10/97).—Judgm 181(2).

La.App. 2 Cir. 1996. Fact is "material" for purposes of summary judgment if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery.—*Curtis v. Curtis*, 680 So.2d 1327, 28,698 (La.App. 2 Cir. 9/25/96).—Judgm 181(2).

La.App. 2 Cir. 1996. Evidence withheld by government is "material," as would require reversal of conviction, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*State v. Lindsey*, 671 So.2d 1155, 28,016 (La.App. 2 Cir. 4/3/96).—Crim Law 700(2.1).

La.App. 2 Cir. 1995. A fact is "material," for summary judgment purposes, if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery. LSA-C.C.P. art. 966.—*Griffin v. Wal-Mart Stores, Inc.*, 662 So.2d 1042, 27,567 (La.App. 2 Cir. 11/1/95), rehearing denied, writ denied 667 So.2d 1059, 1995-3100 (La. 2/16/96).—Judgm 181(2).

La.App. 2 Cir. 1995. Fact is "material," for purposes of summary judgment, if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery; facts are material if they potentially insure or preclude recovery, affect litigants' ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—*Commercial Nat. Bank in Shreveport v. Dance*, 661 So.2d 551, 27,337 (La.App. 2 Cir. 9/27/95), rehearing denied.—Judgm 181(2).

La.App. 2 Cir. 1995. For purposes of summary judgment, fact is "material" if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery. LSA-C.C.P. art. 966.—*Kirkland v. Riverwood Intern. USA, Inc.*, 658 So.2d 715, 26,741 (La.App. 2 Cir. 6/21/95), writ granted 661 So.2d 1370, 1995-1830 (La. 11/3/95), affirmed 681 So.2d 329, 1995-1830 (La. 9/13/96), rehearing denied 694 So.2d 890, 1995-1830 (La. 11/15/96).—Judgm 181(2).

La.App. 2 Cir. 1995. For purposes of requirement for informed consent claim that undisclosed risk be "material," expert testimony is required to extent that materiality depends on existence and nature of risk and likelihood of its occurrence, while no such testimony is necessary to show that person in plaintiff's position would attach significance to particular risk.—*Smith v. Lincoln General Hosp.*, 658 So.2d 256, 27,133 (La.App. 2 Cir.

6/21/95), writ denied 662 So.2d 3, 1995-1808 (La. 10/27/95).—Health 926.

La.App. 2 Cir. 1994. Facts are "material" for summary judgment purposes if they potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—*Miramón v. Woods*, 639 So.2d 353, 25,850 (La.App. 2 Cir. 6/22/94).—Judgm 181(2).

La.App. 2 Cir. 1993. Risk is "material" for purposes of informed consent if reasonable person in patient's position would likely attach significance to risk or cluster of risks in deciding whether or not to forego proposed treatment.—*Yahn v. Folse*, 639 So.2d 261, on rehearing, writ denied 643 So.2d 145, 1994-1276 (La. 9/2/94).—Health 906.

La.App. 2 Cir. 1993. Where exculpatory information is not disclosed to defendant, and it is material in sense that its suppression undermines confidence in outcome of trial, then constitutional error occurs, and conviction must be reversed; evidence is "material" if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*State v. Lindsey*, 621 So.2d 618, writ denied 629 So.2d 417, appeal after remand 671 So.2d 1155, 28,016 (La.App. 2 Cir. 4/3/96).—Crim Law 1166(10.10).

La.App. 2 Cir. 1992. A fact is "material," for purposes of summary judgment, if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery. LSA-C.C.P. art. 966.—*Bradford v. Louisiana Downs, Inc.*, 606 So.2d 1370.—Judgm 181(2).

La.App. 2 Cir. 1989. Under statute permitting insurer to void policy obtained through material misrepresentation, statement by applicant is "material" if it is of such nature that it would have caused insurer not to contract or to contract at higher premium rate. LSA-R.S. 22:619.—*Benton v. Shelter Mut. Ins. Co.*, 550 So.2d 832.—Insurance 2958.

La.App. 2 Cir. 1987. Fact is "material," for purposes of determining whether to grant summary judgment, if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery, or if it potentially ensures or precludes recovery, affects plaintiff's ultimate success, or determines outcome of legal dispute. LSA-C.C.P. arts. 966, 967.—*Dement v. Red River Valley Bank*, 506 So.2d 1329.—Judgm 181(2).

La.App. 2 Cir. 1986. On summary judgment motion, fact is "material" if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery. LSA-C.C.P. art. 966.—*Seamster v. Kerr-McGee Refinery Corp.*, 488 So.2d 1139.—Judgm 181(2).

La.App. 2 Cir. 1984. Within context of motion for summary judgment, fact is "material" if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery, that is, fact is "material" if it potentially insures or precludes recovery, affects litigants' ultimate success or determines outcome of legal dis-

pute. LSA-C.C.P. art. 966.—*Swindle v. Haughton Wood Co., Inc.*, 458 So.2d 992.—Judgm 181(2).

La.App. 2 Cir. 1983. A fact is “material” with respect to summary judgment if its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery.—*Sanders v. City of Blanchard*, 438 So.2d 714.—Judgm 181(2).

La.App. 2 Cir. 1961. A 60-inch concrete pipe which construction contract required owner to furnish for installation by contractor was “material” and not “equipment” within contract provision that contractor would accept risk of delay in delivery of equipment to be furnished by owner.—*Sandel & Lastrapes v. City of Shreveport*, 129 So.2d 620.—Contracts 299(2).

La.App. 2 Cir. 1931. Gas furnished for fuel in drilling of gas and oil wells held not “material” within mechanics’ lien law, for which furnisher could claim lien. LSA-R.S. 9:4801 et seq.—*Southern Gas Line v. Dixie Oil Co.*, 133 So. 181, 16 La.App. 26.—Mech Liens 45.

La.App. 3 Cir. 2001. Facts are “material,” so that dispute regarding facts will preclude grant of summary judgment, if they determine the outcome of the legal dispute. LSA-C.C.P. art. 966.—*Myers v. Dronet*, 801 So.2d 1097, 2001-5 (La.App. 3 Cir. 6/22/01).—Judgm 181(2).

La.App. 3 Cir. 2001. In summary judgment determination of whether a genuine issue of material fact remains, facts are “material” if they determine the outcome of the legal dispute. LSA-C.C.P. art. 966.—*Hardge v. Dubosq*, 797 So.2d 84, 2000-1721 (La.App. 3 Cir. 4/4/01), on rehearing, and rehearing denied, writ denied 808 So.2d 341, 2001-3108 (La. 2/1/02).—Judgm 181(2).

La.App. 3 Cir. 2001. Facts are “material” for purposes of summary judgment if they determine the outcome of the legal dispute. LSA-C.C.P. art. 966.—*Murphy’s Lease & Welding Service, Inc. v. Bayou Concessions Salvage, Inc.*, 780 So.2d 1284, 2000-978, 2000-979 (La.App. 3 Cir. 3/8/01), writ denied 793 So.2d 195, 2001-1005 (La. 6/1/01).—Judgm 181(2).

La.App. 3 Cir. 1999. Facts are “material” for summary judgment purposes if they determine the outcome of the legal dispute. LSA-C.C.P. arts. 966, 967.—*Louisiana Onshore Properties, Inc. v. Manti Resources, Inc.*, 755 So.2d 988, 1999-1088 (La.App. 3 Cir. 12/29/99).—Judgm 181(2).

La.App. 3 Cir. 1998. Facts are “material,” for summary judgment purposes, if they determine the outcome of the legal dispute. LSA-C.C.P. art. 966.—*Giddens v. Giddens*, 722 So.2d 114, 1998-868 (La.App. 3 Cir. 12/9/98), writ denied 739 So.2d 203, 1999-0080 (La. 3/12/99).—Judgm 181(2).

La.App. 3 Cir. 1998. Fact is “material” for summary judgment purposes when its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery.—*Shepard v. Bradford*, 721 So.2d 1049, 1998-172 (La.App.

3 Cir. 11/4/98), writ denied 749 So.2d 667, 1998-3006 (La. 11/19/99).—Judgm 181(2).

La.App. 3 Cir. 1996. Competent person must be informed of material risks associated with medical procedure; risk is “material,” giving rise to duty to inform, if it would influence treatment decision of reasonable person in patient’s position, and disclosure must be made only when risk is medically known and of magnitude that would be material in reasonable patient’s decision to undergo treatment.—*Hayes v. Autin*, 685 So.2d 691, 1996-287 (La.App. 3 Cir. 12/26/96), writ denied 690 So.2d 41, 1997-0281 (La. 3/14/97).—Health 906.

La.App. 3 Cir. 1996. For summary judgment purposes, fact is “material” if its existence is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966.—*Nicholson v. Calcasieu Parish Police Jury*, 685 So.2d 507, 1996-314 (La.App. 3 Cir. 12/11/96).—Judgm 181(2).

La.App. 3 Cir. 1996. Fact is “material,” and genuine issue as to fact will preclude summary judgment, if its existence potentially insures or precludes recovery, affects litigant’s ultimate success, or determines outcome of relevant legal dispute. LSA-C.C.P. art. 966, subd. B.—*Dinger v. Shea*, 685 So.2d 485, 1996-448 (La.App. 3 Cir. 12/11/96).—Judgm 181(2).

La.App. 3 Cir. 1996. Testimony of alleged tortfeasor was “material” to claim for uninsured motorist (UM) benefits and, therefore, was “material” within meaning of rule requiring continuance if party has been unable, with exercise of due diligence, to obtain evidence material to case. LSA-C.C.P. art. 1602.—*Matte v. Louisiana Farm Bureau Cas. Ins. Co.*, 676 So.2d 713, 1995-1308 (La.App. 3 Cir. 6/12/96).—Pretrial Proc 718.

La.App. 3 Cir. 1996. Facts are “material” for purposes of summary judgment if they determine outcome of legal dispute. LSA-C.C.P. art. 966.—*Ponthier v. Brown’s Mfg., Inc.*, 671 So.2d 1253, 1995-1606 (La.App. 3 Cir. 4/3/96).—Judgm 181(2).

La.App. 3 Cir. 1996. In context of motion for summary judgment, facts are “material” if they determine outcome of legal dispute; determination of materiality of particular fact must be made in light of applicable substantive law. LSA-C.C.P. art. 966.—*Butler v. Winn-Dixie Louisiana, Inc.*, 670 So.2d 800, 1995-01201 (La.App. 3 Cir. 3/6/96).—Judgm 181(2).

La.App. 3 Cir. 1995. Fact is “material” when its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery, that is, “material” fact as one that would matter in trial on merits.—*Sumner v. Sumner*, 664 So.2d 718, 1995-677 (La.App. 3 Cir. 11/8/95), writ denied 667 So.2d 531, 1995-2919 (La. 2/9/96).—Judgm 181(2).

La.App. 3 Cir. 1995. Fact is “material” for summary judgment purposes when its existence or nonexistence may be essential to plaintiff’s cause of actions under applicable theory of recovery. LSA-C.C.P. art. 966, subd. B.—*Taylor v. Oakbourne*

Country Club, 663 So.2d 379, 1995-388 (La.App. 3 Cir. 10/4/95), appeal after remand 2002-1177 (La. App. 3 Cir. 5/14/03).—Judgm 181(2).

La.App. 3 Cir. 1995. Facts are “material” for summary judgment purposes if they potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966, subd. B.—Taylor v. Oakbourne Country Club, 663 So.2d 379, 1995-388 (La. App. 3 Cir. 10/4/95), appeal after remand 2002-1177 (La.App. 3 Cir. 5/14/03).—Judgm 181(2).

La.App. 3 Cir. 1995. For purposes of summary judgment motion, fact is “material” if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery, or additionally, if it potentially insures or precludes recovery, affects litigant’s ultimate success, or determines outcome of legal dispute. LSA-C.C.P. arts. 966, 967.—Kyles v. Sylvester, 654 So.2d 380, 1994-1367 (La.App. 3 Cir. 4/5/95), rehearing denied, writ denied 660 So.2d 875, 1995-1552 (La. 9/29/95).—Judgm 181(2).

La.App. 3 Cir. 1995. Fact is “material” for summary judgment purposes when its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery.—Moore v. Sponge, 651 So.2d 962, 1994-1192 (La.App. 3 Cir. 3/8/95), writ denied 654 So.2d 696, 1995-0907 (La. 5/19/95).—Judgm 181(2).

La.App. 3 Cir. 1994. Fact is “material,” so that genuine issues as to existence of that fact will preclude summary judgment, if existence or nonexistence of fact may be essential to plaintiff’s cause of action under applicable theory of recovery, potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966(B).—LeBlanc v. St. Landry Parish Police Jury, 647 So.2d 614, 1994-501 (La.App. 3 Cir. 12/7/94).—Judgm 181(2).

La.App. 3 Cir. 1994. For purposes of summary judgment, a fact is considered “material” if its existence or nonexistence is essential to plaintiff’s theory of recovery. LSA-C.C.P. art. 966, subd. A.—Wagoner v. Dyson, 647 So.2d 493, 1994-728 (La.App. 3 Cir. 12/7/94), writ not considered 650 So.2d 1171, 1995-0129 (La. 3/10/95), appeal after remand 704 So.2d 346, 1997-606 (La.App. 3 Cir. 12/10/97).—Judgm 181(2).

La.App. 3 Cir. 1994. Fact is “material” for summary judgment purposes if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery.—Melancon v. Trahan, 645 So.2d 722, 1994-26 (La.App. 3 Cir. 10/5/94), rehearing denied, writ denied 650 So.2d 1183, 1995-0087 (La. 3/10/95).—Judgm 181(2).

La.App. 3 Cir. 1994. For summary judgment purposes, fact is “material” if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery. LSA-C.C.P. art. 966, subd. B.—Giordano v. Rheem Mfg. Co., 643 So.2d 492, 1993-1614 (La.App. 3 Cir. 10/5/94).—Judgm 181(2).

La.App. 3 Cir. 1994. Facts are “material” if they potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Cormier v. Wise, 638 So.2d 688, 1993-1434 (La.App. 3 Cir. 6/1/94), rehearing denied.—Judgm 181(2).

La.App. 3 Cir. 1994. Fact is “material,” for purposes of summary judgment, if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery; material facts are those which potentially ensure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute.—Faul v. Bank of Sunset & Trust Co., 635 So.2d 573, 1993-1080 (La.App. 3 Cir. 4/6/94), rehearing denied, writ denied 642 So.2d 879, 1994-1627 (La. 9/30/94), writ denied 642 So.2d 880, 1994-1659 (La. 9/30/94).—Judgm 181(2).

La.App. 3 Cir. 1993. For purposes of summary judgment, fact is “material” if its existence or nonexistence may be essential to plaintiff’s recovery, that is, if it potentially ensures or precludes recovery, affects litigant’s ultimate success, or determines outcome of legal dispute. LSA-C.C.P. arts. 966, 967.—Hopkins v. Sovereign Fire & Cas. Ins. Co., 626 So.2d 880, writ denied 634 So.2d 390, 1994-0154 (La. 3/11/94), writ denied 634 So.2d 402, 1993-2958 (La. 3/11/94).—Judgm 181(2).

La.App. 3 Cir. 1991. Fact is “material,” thus precluding summary judgment, if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery, or if it potentially insures or precludes recovery, affects litigant’s ultimate success, or determines outcome of legal dispute.—South Louisiana Bank v. Williams, 591 So.2d 375, writ denied 596 So.2d 211.—Judgm 181(2).

La.App. 3 Cir. 1985. To be “material” for purposes of requirement that insurer establish material effect of insured’s misstatements upon risk assumed by insurer means that statement must have been of such nature that, had it been true, insurer either would not have contracted or would have contracted only at higher premium rate. LSA-R.S. 22:619, subd. B.—Jamshidi v. Shelter Mut. Ins. Co., 471 So.2d 1141.—Insurance 2958.

La.App. 4 Cir. 2002. A fact is “material” for purposes of summary judgment when its existence or nonexistence may be essential to the plaintiff’s cause of action under the applicable theory of recovery. LSA-C.C.P. art. 966.—Roach v. Kamath, 837 So.2d 118, 2002-1309 (La.App. 4 Cir. 12/30/02), writ denied 840 So.2d 1219, 2003-0308 (La. 4/4/03).—Judgm 181(2).

La.App. 4 Cir. 2002. A fact is “material” for purposes of summary judgment if it potentially insures or precludes recovery, affects a litigant’s ultimate success, or determines the outcome of the legal dispute. LSA-C.C.P. art. 966.—Roach v. Kamath, 837 So.2d 118, 2002-1309 (La.App. 4 Cir. 12/30/02), writ denied 840 So.2d 1219, 2003-0308 (La. 4/4/03).—Judgm 181(2).

La.App. 4 Cir. 2002. A fact is “material,” and thus precludes summary judgment, when its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery. LSA—C.C.P. art. 966.—*Fertel v. Brooks*, 832 So.2d 297, 2002-0846 (La.App. 4 Cir. 9/25/02), rehearing denied.—Judgm 181(2).

La.App. 4 Cir. 2002. Fact is “material,” for purposes of summary judgment, when its existence or nonexistence is essential to plaintiff’s cause of action under applicable theory of recovery. LSA—C.C.P. art. 966, subd. B.—*Board of Assessors of City of New Orleans v. City of New Orleans*, 829 So.2d 501, 2002-0691 (La.App. 4 Cir. 9/25/02), writ denied 834 So.2d 439, 2002-2633 (La. 1/10/03), reconsideration denied 840 So.2d 529, 2002-2633 (La. 3/21/03).—Judgm 181(2).

La.App. 4 Cir. 2002. For purposes of determining summary judgment, a fact is “material” when its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery.—*Florane v. Pendleton Memorial Methodist Hosp.*, 822 So.2d 642, 2002-0165 (La.App. 4 Cir. 5/29/02).—Judgm 181(2).

La.App. 4 Cir. 2002. Due process clause requires disclosure by state upon request of evidence which is favorable to accused when evidence is material to guilt or punishment; evidence is “material” only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different, and reasonable probability is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 14.—*State v. Howard*, 805 So.2d 1247, 2000-2700 (La.App. 4 Cir. 1/23/02), rehearing denied, writ denied 824 So.2d 1187, 2002-0648 (La. 9/13/02), appeal after remand 2002-2435 (La.App. 4 Cir. 3/19/03).—Const Law 268(5).

La.App. 4 Cir. 2001. Evidence withheld by prosecutor is “material,” as would require mistrial, only if it is reasonably probable that the result of the proceeding would have been different had the evidence been disclosed to the defense; a reasonable probability is one, which is sufficient to undermine confidence in the outcome. LSA—C.Cr.P. art. 775.—*State v. Singleton*, 801 So.2d 1150, 2001-0282 (La.App. 4 Cir. 11/7/01), writ denied 825 So.2d 1168, 2001-3170 (La. 9/20/02).—Crim Law 700(2.1).

La.App. 4 Cir. 2001. A fact is “material” for purposes of summary judgment when its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery.—*Bank of New York v. Williams*, 796 So.2d 69, 2000-1922 (La.App. 4 Cir. 8/22/01).—Judgm 181(2).

La.App. 4 Cir. 2001. Facts are “material” for purposes of summary judgment if they potentially insure or preclude recovery, affect a litigant’s ultimate success, or determine the outcome of the legal dispute.—*Bank of New York v. Williams*, 796 So.2d 69, 2000-1922 (La.App. 4 Cir. 8/22/01).—Judgm 181(2).

La.App. 4 Cir. 2001. Fact is “material,” for purposes of a summary judgment motion, if it is essen-

tial to a plaintiff’s cause of action under the applicable theory of recovery and without which plaintiff could not prevail. LSA—C.C.P. art. 966.—*Coates v. Anco Insulations, Inc.*, 786 So.2d 749, 2000-1331 (La.App. 4 Cir. 3/21/01).—Judgm 181(2).

La.App. 4 Cir. 2001. Generally, “material” facts, in the context of a summary judgment motion, are those that potentially insure or preclude recovery, affect the litigant’s ultimate success, or determine the outcome of a legal dispute. LSA—C.C.P. art. 966.—*Coates v. Anco Insulations, Inc.*, 786 So.2d 749, 2000-1331 (La.App. 4 Cir. 3/21/01).—Judgm 181(2).

La.App. 4 Cir. 2001. A fact is “material,” for purposes of summary judgment, if its existence or non-existence may be essential to the plaintiff’s cause of action under the applicable theory of recovery. LSA—C.C.P. art. 966.—*Bell v. Touro Infirmary, Inc.*, 785 So.2d 926, 2000-0824 (La.App. 4 Cir. 3/21/01).—Judgm 181(2).

La.App. 4 Cir. 2001. A fact is “material” for summary judgment purposes, if it is essential to a plaintiff’s cause of action under the applicable theory of recovery and without which plaintiff could not prevail; generally, material facts are those that potentially insure or preclude recovery, affect the litigant’s ultimate success, or determine the outcome of a legal dispute. LSA—C.C.P. art. 966.—*Huber v. Liberty Mut. Ins. Co.*, 780 So.2d 551, 2000-0679 (La.App. 4 Cir. 2/7/01).—Judgm 181(2).

La.App. 4 Cir. 2001. Fact is “material,” for summary judgment purposes, if it is essential to plaintiff’s cause of action under the applicable theory of recovery and without which plaintiff could not prevail.—*Stanton v. Tulane University of Louisiana*, 777 So.2d 1242, 2000-0403 (La.App. 4 Cir. 1/10/01), writ denied 789 So.2d 597, 2001-0391 (La. 4/12/01).—Judgm 181(2).

La.App. 4 Cir. 2000. Evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a “reasonable probability” is a probability sufficient to undermine confidence in the outcome.—*State v. Moore*, 777 So.2d 600, 1999-2684 (La.App. 4 Cir. 12/20/00), writ denied 803 So.2d 986, 2001-0365 (La. 12/14/01).—Crim Law 700(2.1).

La.App. 4 Cir. 2000. Evidence subject of *Brady* request is “material” only if there is a reasonable probability that, had evidence been disclosed to the defense, the result of proceeding would have been different, with a “reasonable probability” being a probability sufficient to undermine confidence in outcome.—*State v. Williams*, 769 So.2d 629, 1998-1947 (La.App. 4 Cir. 8/23/00).—Crim Law 700(2.1).

La.App. 4 Cir. 2000. Evidence is “material,” for the purpose of the state’s duty to disclose evidence which is favorable to the defense and is material to guilt or punishment, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a “reasonable probability” is a

probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 14.—State v. Dawson, 768 So.2d 647, 2000-1241 (La.App. 4 Cir. 6/28/00), writ denied 775 So.2d 1046, 2000-2279 (La. 11/27/00).—Crim Law 627.6(1).

La.App. 4 Cir. 2000. Potentially exculpatory evidence is "material," so that prosecution has duty under *Brady* to disclose material to defendant, only if there is a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—State v. Johnson, 764 So.2d 1113, 1999-1117 (La.App. 4 Cir. 5/17/00), writ denied 774 So.2d 973, 2000-2297 (La. 11/17/00), writ denied 794 So.2d 822, 2000-1827 (La. 6/29/01).—Crim Law 700(2.1).

La.App. 4 Cir. 1999. Evidence is "material," for *Brady* purposes, only if it is reasonably probable that the result of the proceeding would have been different had the evidence been disclosed to the defense.—State v. Booth, 745 So.2d 737, 1998-2065 (La.App. 4 Cir. 10/20/99).—Crim Law 700(2.1).

La.App. 4 Cir. 1999. A fact is "material," for summary judgment purposes, if it is essential to a plaintiff's cause of action under the applicable theory of recovery and without which the plaintiff could not prevail.—Billes/Manning Architects v. Accountemps, Div. of Robert Half of Louisiana, Inc., 742 So.2d 728, 1998-3044 (La.App. 4 Cir. 9/15/99).—Judgm 181(2).

La.App. 4 Cir. 1999. Newly discovered evidence that witness used alias during first-degree murder trial was not "material" to prosecution so as to warrant new trial, where witness had no prior convictions or outstanding arrest warrants, but only prior arrests which could not have been used to impeach witness. LSA—C.Cr.P. art. 851; LSA—C.E. art. 609.1.—State v. Labran, 737 So.2d 903, 1997-2614 (La.App. 4 Cir. 5/26/99), writ denied 752 So.2d 175, 1999-1981 (La. 1/7/00).—Crim Law 940.

La.App. 4 Cir. 1999. Evidence is "material," for the purpose of determining whether a new trial is warranted based on newly discovered evidence, only if it is reasonably probable that the result of a proceeding would have been different had the evidence been disclosed to the defense, and a "reasonable probability" is one that is sufficient to undermine confidence in the outcome. LSA—C.Cr.P. art. 851.—State v. Labran, 737 So.2d 903, 1997-2614 (La.App. 4 Cir. 5/26/99), writ denied 752 So.2d 175, 1999-1981 (La. 1/7/00).—Crim Law 940.

La.App. 4 Cir. 1998. Doctor's duty is to disclose all risks that are material; risk is "material" when reasonable person in what doctor knows or should know to be patient's position would be likely to attach significance to risk or cluster of risks in deciding whether or not to forego proposed therapy.—Descant v. Administrators of Tulane Educational Fund, 706 So.2d 618, 1995-2127 (La.App. 4 Cir. 1/21/98), writ denied 717 So.2d 1131, 1998-0467 (La. 4/3/98), reconsideration denied 719 So.2d 65, 1998-0467 (La. 5/15/98).—Health 906.

La.App. 4 Cir. 1997. Evidence is "material," and consequently required to be turned over to defendant upon request, if there is reasonable probability that outcome of trial would have been different had evidence been disclosed to defense.—State v. Nelson, 705 So.2d 758, 1996-0883 (La.App. 4 Cir. 12/17/97), writ denied 720 So.2d 677, 1998-0197 (La. 6/5/98), reconsideration denied 726 So.2d 15, 1998-0197 (La. 10/9/98).—Crim Law 700(2.1).

La.App. 4 Cir. 1996. Evidence is "material" and must be disclosed to defendant if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—State v. Hampton, 686 So.2d 1021, 1994-1943 (La.App. 4 Cir. 12/27/96), writ denied 695 So.2d 986, 1997-0166 (La. 6/13/97).—Crim Law 700(2.1).

La.App. 4 Cir. 1996. For summary judgment purposes, "material" fact is one that would matter on trial on the merits.—Walker v. Kroop, 678 So.2d 580, 1996-0618 (La.App. 4 Cir. 7/24/96).—Judgm 181(2).

La.App. 4 Cir. 1996. Test for determining materiality of evidence is same whether or not defense makes pretrial request for exculpatory evidence, that is, that evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 14.—State v. Phillips, 670 So.2d 588, 1992-1063 (La.App. 4 Cir. 2/29/96), writ denied 699 So.2d 85, 1996-2131 (La. 9/5/97).—Crim Law 700(2.1).

La.App. 4 Cir. 1996. Fact is "material" for purposes of summary judgment if it is essential to plaintiff's cause of action under applicable theory of recovery and without which plaintiff could not prevail; generally, material facts are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA—C.C.P. art. 966.—Robinson v. You-suf, 668 So.2d 436, 1995-1476 (La.App. 4 Cir. 1/19/96), writ denied 670 So.2d 1232, 1996-0430 (La. 3/29/96).—Judgm 181(2).

La.App. 4 Cir. 1995. Fact is "material" for purposes of summary judgment if it is essential to plaintiff's cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA—C.C.P. art. 966, subd. B.—Leflore v. Coburn, 665 So.2d 1323, 1995-0690, 1995-0249 (La. App. 4 Cir. 12/28/95), rehearing denied, writ denied 670 So.2d 1234, 1996-0411 (La. 3/29/96), writ denied 670 So.2d 1234, 1996-0453 (La. 3/29/96).—Judgm 181(2).

La.App. 4 Cir. 1995. Questions are of "material" issue if they are of importance to case.—State v. Short, 655 So.2d 790, 1994-0233 (La.App. 4 Cir. 5/16/95), writ denied 663 So.2d 719, 1995-1520 (La. 11/17/95).—Witn 270(1).

La.App. 4 Cir. 1995. A fact is “material,” for summary judgment purposes, if it is essential to a plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966, subd. B.—*Brandner v. New Orleans Office Supply Center, Inc.*, 654 So.2d 858, 1994-2534 (La.App. 4 Cir. 4/26/95), writ denied 657 So.2d 1039, 1995-1298 (La. 6/30/95).—Judgm 181(2).

La.App. 4 Cir. 1995. Fact is “material” for summary judgment purposes if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail. LSA-C.C.P. art. 966, subd. B.—*South Central Bell Telephone Co. v. Sewerage and Water Bd. of New Orleans*, 652 So.2d 1090, 1994-1648, 1994-1649 (La.App. 4 Cir. 3/16/95), writ denied 654 So.2d 1090, 1995-0949 (La. 5/19/95).—Judgm 181(2).

La.App. 4 Cir. 1993. Fact is “material,” for purposes of summary judgment, if it potentially insures or precludes recovery, if it potentially affects litigant’s ultimate success, or if it potentially determines outcome of legal dispute. LSA-C.C.P. art. 966, subd. B.—*Hackett v. Schmidt*, 630 So.2d 1324, writ denied 635 So.2d 1123, 1994-0266 (La. 4/4/94).—Judgm 181(2).

La.App. 4 Cir. 1993. Evidence is “material” requiring state to disclose it to defendant upon his request if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*State v. Ruiz*, 630 So.2d 897, appeal after remand 647 So.2d 1317, 1994-0541 (La.App. 4 Cir. 12/15/94).—Crim Law 627.6(1).

La.App. 4 Cir. 1993. Fact is “material” for purposes of summary judgment if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery.—*Duet v. Lucky*, 621 So.2d 168.—Judgm 181(2).

La.App. 4 Cir. 1992. Fact is “material” for summary judgment purposes if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; generally, material facts are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—*Prado v. Sloman Neptun Schiffahrts, A.G.*, 611 So.2d 691, writ not considered 613 So.2d 986.—Judgm 181(2).

La.App. 4 Cir. 1990. Risk of perforation of neck of bladder with consequent extravasation of fluid into the peritoneal cavity was not “material” risk requiring disclosure for informed consent purposes to surgical patient who underwent transurethral resection to remove part or all of enlarged prostate gland and thereby relieve blockage of urethra; risk of perforation with extravasation was known risk, but occurred in less than one percent of transurethral resections performed, perforation with extravasation could be corrected with good results when detected and treated in time, and patient had long history of urination problems.—*Roussel v. Sharp*, 569 So.2d 67.—Health 908.

La.App. 4 Cir. 1989. Evidence is “material,” for purposes of requirement that prosecution disclose it to defendant in criminal case, only if there is a reasonable probability that, had evidence been disclosed to defense, result of trial would have been different.—*State v. Ortiz*, 555 So.2d 623, affirmed in part, vacated in part, remanded 567 So.2d 81, on remand 573 So.2d 531, writ granted 576 So.2d 42.—Crim Law 700(3).

La.App. 5 Cir. 2002. A fact is “material,” for purposes of summary judgment, if its existence or nonexistence may be essential to a party’s cause of action under the applicable theory of recovery. LSA-C.C.P. art. 966.—*Willis v. Royal Imports, Inc.*, 807 So.2d 953, 01-792 (La.App. 5 Cir. 1/15/02).—Judgm 181(2).

La.App. 5 Cir. 2002. A fact is “material,” for purposes of summary judgment, if its existence or nonexistence may be essential to a party’s cause of action under the applicable theory of recovery. LSA-C.C.P. art. 966.—*Gray v. Cannon*, 807 So.2d 924, 01-757 (La.App. 5 Cir. 1/15/02).—Judgm 181(2).

La.App. 5 Cir. 2001. A fact is “material” for purposes of summary judgment when its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery. LSA-C.C.P. art. 966.—*Elmwood MRI, Ltd. v. Paracelsus Pioneer Valley Hosp., Inc.*, 806 So.2d 743, 01-764 (La.App. 5 Cir. 12/26/01).—Judgm 181(2).

La.App. 5 Cir. 2001. Fact is “material,” for summary judgment purposes, if its existence or nonexistence may be essential to party’s cause of action under applicable theory of recovery.—*Carr v. Union Pacific Railroad Co.*, 803 So.2d 427, 01-909 (La.App. 5 Cir. 12/26/01), rehearing denied, writ denied 814 So.2d 561, 2002-0565 (La. 4/26/02), writ denied 814 So.2d 563, 2002-0596 (La. 4/26/02).—Judgm 181(2).

La.App. 5 Cir. 2001. A fact is “material” for purposes of summary judgment if it is essential to a claim or defense under applicable substantive law. LSA-C.C.P. art. 966, subd. B.—*Rhoads v. Quicksilver Brokers, Ltd.*, 801 So.2d 1284, 01-768 (La.App. 5 Cir. 12/26/01), rehearing denied, writ denied 815 So.2d 104, 2002-0419 (La. 5/3/02).—Judgm 181(2).

La.App. 5 Cir. 2001. Fact is “material,” so as to preclude summary judgment when it is in dispute, when its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery.—*Bauer v. Dyer*, 782 So.2d 1133, 00-1778 (La.App. 5 Cir. 2/28/01), writ denied 793 So.2d 162, 2001-0822 (La. 5/25/01).—Judgm 181(2).

La.App. 5 Cir. 2001. For purposes of determining whether genuine issue of material fact exists, as would preclude summary judgment, facts are “material” if they have potential to insure or preclude recovery, affect a litigant’s ultimate success, or determine outcome of a legal dispute. LSA-C.C.P. art. 966, subd. B.—*Hooper v. State Farm Mut. Auto. Ins. Co.*, 782 So.2d 1029, 00-1509 (La.App. 5 Cir. 1/23/01).—Judgm 181(2).

La.App. 5 Cir. 2001. Fact is “material,” for summary judgment purposes, if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery.—*Lee v. Delta Air Lines, Inc.*, 778 So.2d 1169, 00-1034 (La.App. 5 Cir. 1/30/01).—Judgm 181(2).

La.App. 5 Cir. 2000. Facts are “material,” for summary judgment purposes, when their existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery.—*Brown v. Ackel*, 767 So.2d 827, 00-287 (La.App. 5 Cir. 7/25/00).—Judgm 181(2).

La.App. 5 Cir. 1998. Fact is “material,” for purposes of summary judgment motion, when its existence, or nonexistence, may be essential to plaintiff’s cause of action under the applicable theory of recovery.—*Moody v. United Nat. Ins. Co.*, 743 So.2d 680, 98-287 (La.App. 5 Cir. 9/29/98), writ denied 734 So.2d 639, 1998-2713 (La. 12/18/98).—Judgm 181(2).

La.App. 5 Cir. 1998. Evidence suppressed by prosecution is “material,” such that suppression will violate defendant’s right to fair trial, only if there is a reasonable probability that the result of the proceeding would have been different if the evidence had been disclosed to the defense; defense need not show the evidence would have resulted in a different verdict, but only that disclosure of suppressed evidence to competent counsel would have made a different result reasonably probable. U.S.C.A. Const.Amend. 14.—*State v. Calloway*, 718 So.2d 559, 97-796 (La.App. 5 Cir. 8/25/98), writ denied 734 So.2d 1229, 1998-2435 (La. 1/8/99), writ denied 734 So.2d 1229, 1998-2438 (La. 1/8/99), appeal after remand 781 So.2d 849, 00-1230 (La.App. 5 Cir. 2/28/01).—Crim Law 700(2.1).

La.App. 5 Cir. 1997. Evidence is “material,” for purposes of *Brady* rule that material evidence favorable to accused must be disclosed, only if there is a reasonable probability that result of proceeding would have been different if evidence had been disclosed to defense.—*State v. Rowan*, 694 So.2d 1052, 97-21 (La.App. 5 Cir. 4/29/97).—Crim Law 700(2.1).

La.App. 5 Cir. 1996. Fact is “material,” for purposes of determining summary judgment motion, if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery, or if it potentially ensures or precludes recovery, affects plaintiff’s ultimate success, or determines outcome of legal dispute.—*Greater New Orleans Homestead, FSB v. David*, 673 So.2d 1078, 95-986 (La.App. 5 Cir. 4/16/96).—Judgm 181(2).

La.App. 5 Cir. 1995. Fact is “material” for summary judgment purposes if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of law, if it potentially insures or precludes recovery, affects litigants’ ultimate success, or determines outcome of legal dispute.—*Genusa v. B & B Steel Metal & Roofing*, 663 So.2d 788, 95-318 (La.App. 5 Cir. 10/18/95), writ denied 666 So.2d 672, 1995-2718 (La. 1/26/96).—Judgm 181(2).

La.App. 5 Cir. 1995. For purposes of motion for summary judgment, fact is “material” if its existence or nonexistence may be essential to plaintiff’s cause of action under applicable theory of recovery. LSA-C.C.P. art. 966.—*Blouin v. Shell Oil Co.*, 656 So.2d 1118, 95-89 (La.App. 5 Cir. 5/30/95), writ granted, judgment vacated and set aside 661 So.2d 456, 1995-1623 (La. 10/6/95).—Judgm 181(2).

La.App. 5 Cir. 1995. For purposes of summary judgment, fact is “material” if it potentially ensures or precludes recovery, if it affects litigant’s ultimate success, or if it determines outcome of case. LSA-C.C.P. art. 966.—*Blouin v. Shell Oil Co.*, 656 So.2d 1118, 95-89 (La.App. 5 Cir. 5/30/95), writ granted, judgment vacated and set aside 661 So.2d 456, 1995-1623 (La. 10/6/95).—Judgm 181(2).

La.App. 5 Cir. 1994. On motion for summary judgment, fact is “material” if it is essential to plaintiff’s cause of action under applicable theory of recovery and plaintiff could not prevail without it. (Per Kliebert, C.J., with two Judges concurring.) LSA-C.C.P. art. 966.—*Noble v. Armstrong*, 635 So.2d 1199, 93-841 (La.App. 5 Cir. 3/16/94), appeal after remand 670 So.2d 1280, 95-720 (La.App. 5 Cir. 2/14/96), writ denied 672 So.2d 673, 1996-0659 (La. 4/26/96).—Judgm 181(2).

La.App. 5 Cir. 1991. A fact is “material” for purposes of summary judgment if it potentially ensures or precludes recovery, if it affects litigant’s ultimate success, or if it determines outcome of case. LSA-C.C.P. art. 966.—*Smith v. Estrade*, 589 So.2d 1158.—Judgm 181(2).

Me. 2003. A fact is considered “material,” for summary judgment purposes, if it could potentially affect the outcome of the case.—*University of Maine Foundation v. Fleet Bank of Maine*, 817 A.2d 871, 2003 ME 20.—Judgm 181(2).

Me. 1999. A fact is “material,” as required to preclude summary judgment, when it has the potential to affect the outcome of the suit.—*Kenny v. Department of Human Services*, 740 A.2d 560, 1999 ME 158.—Judgm 181(2).

Me. 1998. Fact is “material,” for summary judgment purposes, when it has the potential to affect the outcome of the suit.—*Prescott v. State Tax Assessor*, 721 A.2d 169, 1998 ME 250.—Judgm 181(2).

Me. 1997. In determining whether nondisclosed evidence that was favorable to defendant was material to guilt or punishment, so that its nondisclosure violated due process, evidence is “material” only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different, and “reasonable probability” is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 14.—*State v. Brewer*, 699 A.2d 1139, 1997 ME 177.—Const Law 268(5).

Me. 1996. For purposes of rule, that real estate broker’s breach of fiduciary duty, as agent for seller of real estate, by failing to disclose material information to seller results in forfeiture of commission by broker, information is “material” to transaction

if person with degree of business acumen would want that information before proceeding.—*Goldberg Realty Group v. Weinstein*, 669 A.2d 187.—*Brok* 65(1).

Me. 1996. For purposes of rule, that real estate broker's breach of fiduciary duty, as agent for seller of real estate, by failing to disclose material information to seller results in forfeiture of commission by broker, test for determining whether information is "material" is whether information might reasonably be expected to influence principal's decision.—*Goldberg Realty Group v. Weinstein*, 669 A.2d 187.—*Brok* 65(1).

Me. 1978. In context of requirement that defendant establish by preponderance of evidence "material" falsity of statements in affidavit for search warrant and also establish that statements were intentionally or knowingly false or made with reckless disregard for truth in order for search warrant to be voided, the term "material" means necessary to the finding of probable cause. U.S.C.A.Const. Amend. 4.—*State v. White*, 391 A.2d 291.—*Searches* 196.

Md. 2001. Evidence of undisclosed written plea agreements between State and two key codefendant witnesses was "material" within meaning of *Brady*, where defendant made specific request for the withheld materials, case against defendant was a close one, witnesses' testimony was central to case, agreements provided witnesses with a significant inducement to testify falsely, defendant attempted to cross-examine witnesses on issue of their credibility but that attempt was far less effective than it would have been had he possessed agreements, and State specifically emphasized witnesses' credibility in closing arguments, misleading jury about potential for witnesses' imminent incarceration and stressing the total lack of motive for either to testify falsely.—*Wilson v. State*, 768 A.2d 675, 363 Md. 333.—*Crim Law* 700(4).

Md. 1999. Omission is "material" under Consumer Protection Act if significant number of unsophisticated consumers would find that information important in determining a course of action. Code, Commercial Law, §§ 13-301, 13-303.—*Green v. H & R Block, Inc.*, 735 A.2d 1039, 355 Md. 488.—*Cons Prot* 4.

Md. 1999. In usual case, whether omission would be important to significant number of unsophisticated consumers, so as to be "material" under Consumer Protection Law, is question of fact for jury and not question of law for court; only when facts do not allow for reasonable inference of materiality or immateriality should issue be decided as a matter of law. Code, Commercial Law, §§ 13-301, 13-303.—*Green v. H & R Block, Inc.*, 735 A.2d 1039, 355 Md. 488.—*Cons Prot* 36.1.

Md. 1999. Under Federal Trade Commission's (FTC) enforcement policy in deception cases, it is probability that deceptive practice affected customer's decision that makes misrepresentation "material."—*Luskin's, Inc. v. Consumer Protection Div.*, 726 A.2d 702, 353 Md. 335.—*Cons Prot* 7.

Md. 1998. Evidence offered as newly discovered must be "material" to the result, and that inquiry is a threshold question, in deciding whether to grant new trial; that means that the evidence must be more than merely cumulative or impeaching. Md. Rule 4-331(c).—*Argyrou v. State*, 709 A.2d 1194, 349 Md. 587.—*Crim Law* 940.

Md. 1950. Reliance upon either a fraudulent or an innocent misrepresentation of fact in a business transaction is justifiable only if fact misrepresented is material, and fact is "material" if its existence or nonexistence is a matter to which a reasonable man would attach importance in determining his choice of action in transaction, or maker of representation knows its recipient is likely to regard fact as important although a reasonable man would not so regard it.—*Brodsky v. Hull*, 77 A.2d 156, 196 Md. 509.—*Fraud* 18.

Md. 1939. A municipal contractor's bond providing for payment of claims for all "material" furnished, installed, erected, and incorporated in structure, covered a claim for lumber used in building concrete forms and scaffolding.—*Fidelity & Deposit Co. of Maryland v. Mattingly Lumber Co.*, 4 A.2d 447, 176 Md. 217.—*Mun Corp* 347(2).

Md.App. 2002. A change in circumstances is "material," for purposes of an action to modify a child support award, when it meets two requirements: first, it must be relevant to the level of support a child is actually receiving or entitled to receive; second, the change must be of a sufficient magnitude to justify judicial modification of the support order. West's Ann.Md.Code, Family Law, § 12-104(a).—*Petitto v. Petitto*, 808 A.2d 809, 147 Md.App. 280, reconsideration denied.—*Child S* 234.

Md.App. 2001. A fact is "material" for summary judgment purposes if its resolution will make a difference in the outcome of the case. Md.Rule 2-501(b).—*Beyer v. Morgan State University*, 779 A.2d 388, 139 Md.App. 609, certiorari granted 785 A.2d 1290, 367 Md. 86, affirmed 800 A.2d 707, 369 Md. 335, reconsideration denied.—*Judgm* 181(2).

Md.App. 2000. An omission is "material" under the Consumer Protection Act (CPA) if a significant number of unsophisticated consumers would attach importance to the information in determining a choice of action. Code, Commercial Law, § 13-301(1-3).—*Forrest v. P & L Real Estate Inv. Co.*, 759 A.2d 1187, 134 Md.App. 371.—*Cons Prot* 4.

Md.App. 2000. Term "material," as used in connection with determination of whether there has been a material change of circumstances in needs of children or parents' ability to provide support, limits a court's authority to situations where a change is of sufficient magnitude to justify judicial modification of child support order. Code, Family Law, § 12-202(a)(2).—*Payne v. Payne*, 752 A.2d 1209, 132 Md.App. 432.—*Child S* 234.

Md.App. 1999. For a change in circumstance to be "material," the change must be significant enough to justify judicial modification of the child

support obligation; the court should evaluate not only the change, but how that change affects a parent's ability to meet his or her child support obligation. Code, Family Law, § 12-104(a).—*Sczudlo v. Berry*, 743 A.2d 268, 129 Md.App. 529.—Child S 234.

Md.App. 1997. Evidence is "material" if it tends to establish proposition that has legal significance to litigation.—*Cook v. State*, 702 A.2d 971, 118 Md.App. 404, certiorari denied 707 A.2d 1328, 349 Md. 234.—Crim Law 382.

Md.App. 1996. For purposes of principle that a material change of circumstances is required for a change of child custody, the term "material" relates to a change that may affect welfare of a child.—*Wagner v. Wagner*, 674 A.2d 1, 109 Md.App. 1, reconsideration denied, certiorari denied 681 A.2d 69, 343 Md. 334.—Child C 556.

Md.App. 1995. For purposes of summary judgment motion, "material" fact is one that will somehow affect outcome of case. Md.Rule 2-501.—*Fearnow v. Chesapeake & Potomac Telephone Co. of Maryland*, 655 A.2d 1, 104 Md.App. 1, supplemented on reconsideration, certiorari granted 663 A.2d 1271, 339 Md. 445, affirmed in part, reversed in part 676 A.2d 65, 342 Md. 363.—Judgm 181(2).

Md.App. 1995. Disputed fact is not "material," and will not preclude grant of summary judgment, unless resolution of issue would somehow affect outcome of case. Md.Rule 2-501(a).—*Taylor v. Feissner*, 653 A.2d 947, 103 Md.App. 356, reconsideration denied, certiorari denied 663 A.2d 73, 339 Md. 355.—Judgm 181(2).

Md.App. 1993. Evidence is "material" if it tends to establish a proposition that has legal significance to the litigation; it is "relevant" if it is sufficiently probative of a proposition that, if established, would have legal significance to the litigation.—*Kelly Catering, Inc. v. Holman*, 624 A.2d 1300, 96 Md.App. 256, certiorari granted 632 A.2d 446, 332 Md. 480, affirmed 639 A.2d 701, 334 Md. 480.—Evid 99, 143.

Md.App. 1991. Evidence is "material" if it tends to establish a proposition that has legal significance to litigation; it is "relevant" if it is sufficiently probative of proposition that, if established, would have legal significance to litigation.—*Myers v. Celotex Corp.*, 594 A.2d 1248, 88 Md.App. 442, certiorari denied *Fibreboard Corp. v. Myers*, 600 A.2d 418, 325 Md. 249.—Evid 99, 143.

Md.App. 1991. Promise on part of insurance broker to secure three-year coverage at guaranteed annual premium was "material" to insured's decision to obtain insurance through broker, and supported claim for fraud, if promise was made to make broker's proposal more attractive and actually had that effect; mere fact that broker's proposal was otherwise superior to those of rival brokers, or that insured had not asked for premium guarantee, did not preclude finding of "materiality."—*Twelve Knotts Ltd. Partnership v. Fireman's Fund Ins. Co.*, 589 A.2d 105, 87 Md.App. 88.—Insurance 1672.

Mass. 2000. Evidence is "material" if, in considering the entire record, it creates a reasonable doubt as to the defendant's guilt that would not otherwise exist.—*Com. v. Harwood*, 733 N.E.2d 547, 432 Mass. 290.—Crim Law 382.

Mass. 1999. False statement, for purposes of perjury statute, is "material" if it tends in reasonable degree to affect some aspect or result of the inquiry. M.G.L.A. c. 268, § 1.—*Com. v. D'Amour*, 704 N.E.2d 1166, 428 Mass. 725.—Perj 11(2).

Mass. 1997. Insured's failure to disclose his ownership of second automobile in application for umbrella liability insurance policy was "material" misrepresentation, permitting insurer to void policy under statute governing effects of misrepresentations by insurance applicants, where it was uncontested that insurer would have charged additional premium of \$30 had insured made disclosure, notwithstanding that insured kept his two automobiles in different states and only drove one at a time. M.G.L.A. c. 175, § 186.—*Barnstable County Ins. Co. v. Gale*, 680 N.E.2d 42, 425 Mass. 126.—Insurance 3006.

Mass. 1997. Fact is deemed "material" under statute governing effects of misrepresentations by insurance applicants if it influences premium. M.G.L.A. c. 175, § 186.—*Barnstable County Ins. Co. v. Gale*, 680 N.E.2d 42, 425 Mass. 126.—Insurance 2958.

Mass. 1997. If insured falsely states fact that would increase premium, misrepresentation is "material," for purposes of statute governing effects of misrepresentations by insurance applicants. M.G.L.A. c. 175, § 186.—*Barnstable County Ins. Co. v. Gale*, 680 N.E.2d 42, 425 Mass. 126.—Insurance 2958.

Mass. 1995. When specifically requested, but undelivered, exculpatory evidence is at issue, it will be considered "material" for new trial purposes, if defendant demonstrates that substantial basis exists for claiming prejudice from nondisclosure.—*Com. v. Schand*, 653 N.E.2d 566, 420 Mass. 783.—Crim Law 919(1).

Mass. 1991. Warrant application for search of neighbor's apartment was not evidence "material" to defense or within scope of narcotics defendant's discovery request; request was general request, and jury was presented with evidence that called into question defendant's possession of cocaine, thus it could not be concluded that information contained in warrant papers might have created reasonable doubt that did not otherwise exist. Rules Crim. Proc., Rule 14(a)(1)(C), 43C M.G.L.A.—*Com. v. Montanez*, 571 N.E.2d 1372, 410 Mass. 290, habeas corpus dismissed by *Montanez v. Massachusetts Dept. of Corrections*, 1993 WL 315320.—Crim Law 627.8(6), 700(3).

Mass. 1980. Evidence is "material" in the constitutional sense if, on consideration of entire record, evidence is capable of creating a reasonable doubt that would not otherwise exist.—*Com. v. St. Germain*, 408 N.E.2d 1358, 381 Mass. 256.—Crim Law 382.

Mass. 1972. Although substantial discrepancy existed between statement of insured in his report to motor vehicle insurer that he did not drink, except perhaps a beer at supper, and his testimony before auditor more than three years later that he had four bottles of beer during the evening of the accident, such discrepancy was not “material,” and thus did not constitute breach of cooperation clause, where there was no finding that insured was intoxicated or that his driving ability at the time of the accident was impaired, and no evidence that the beer contributed in any way to causing the accident.—*Lombardi v. Lumbermens Mut. Cas. Co.*, 280 N.E.2d 149, 361 Mass. 310.—Insurance 3207.

Mass. 1943. Electricity was “material,” within general contractor’s bond which guaranteed payment of any person who furnished any material on account of contract or rented out any appliances or equipment used in execution of the contract, and, hence, light company’s claim for electricity was within protection of the bond.—*Johnson-Foster Co. v. D’Amore Const. Co.*, 50 N.E.2d 89, 314 Mass. 416, 148 A.L.R. 353.—Mun Corp 347(2); Pub Contr 50.

Mass. 1910. A municipal waterworks contractor’s bond to secure payment for “material” under St.1904, c. 349, covers dynamite used in the work and fuses used to explode it.—*E.I. Dupont De Nemours Powder Co. v. Culgin-Pace Contracting Co.*, 92 N.E. 1023, 206 Mass. 585.—Mun Corp 347(1).

Mass.App.Ct. 2000. For purposes of the balancing test to determine the appropriateness and extent of remedial action when potentially exculpatory evidence is lost or destroyed, evidence is “material” if, in considering the entire record, it creates a reasonable doubt as to the defendant’s guilt that would not otherwise exist.—*Com. v. Rodriguez*, 737 N.E.2d 910, 50 Mass.App.Ct. 405, review denied 742 N.E.2d 81, 433 Mass. 1102.—Crim Law 700(9).

Mass.App.Ct. 1998. Taxpayer’s misrepresentation about his domicile at time he received capital gain on sale of his employer’s stock was “material” for purposes of prosecution for wilfully subscribing false state income tax returns; tax liability would have differed, depending on which state was taxpayer’s domicile at time of sale. *M.G.L.A. c. 62C, § 73(f)(1)*.—*Com. v. Moore*, 688 N.E.2d 1021, 44 Mass.App.Ct. 129.—Tax 1103.

Mich. 2001. A fact or representation in an application is “material” within the meaning of statute permitting the insurer to avoid the policy for a material misrepresentation, where communication of the information would bring about a rejection of the risk or the charging of an increased premium; the proper materiality question under the statute is whether “the” contract issued, at the specific premium rate agreed upon, would have been issued notwithstanding the misrepresented facts; overruling *Zulcosky v. Farm Bureau Life Ins. Co. of Michigan*, 206 Mich.App. 95, 520 N.W.2d 366. *M.C.L.A. § 500.2218(1)*.—*Oade v. Jackson Nat. Life Ins. Co. of Michigan*, 632 N.W.2d 126, 465 Mich. 244.—Insurance 2958.

Mich. 2001. Insured’s misrepresentation by failing to inform life insurer of hospitalization for chest pains between time of application and delivery of policy was “material,” even though the insurer would not have rejected the application and even though the insured’s health did not change during that period; the correct information would have led the insurer to charge an increased premium, hence a different contract. *M.C.L.A. § 500.2218(1)*.—*Oade v. Jackson Nat. Life Ins. Co. of Michigan*, 632 N.W.2d 126, 465 Mich. 244.—Insurance 3003(11).

Mich. 1998. Because the prosecution must carry the burden of proving every element beyond a reasonable doubt, regardless of whether the defendant specifically disputes or offers to stipulate any of the elements, the elements of the offense are always “in issue” and, thus, “material,” for purposes of determining relevance of prosecution’s offered evidence. *MRE 401, 402*.—*People v. Crawford*, 582 N.W.2d 785, 458 Mich. 376.—Crim Law 382.

Mich. 1998. For purpose of determining whether criminal defendant is entitled to discovery of documents with respect to which statutory privilege is claimed, evidence is “material” only if there is reasonable probability that trial result would have been different, had evidence been disclosed.—*People v. Fink*, 574 N.W.2d 28, 456 Mich. 449, rehearing denied 576 N.W.2d 168, 456 Mich. 1230.—Crim Law 627.5(6).

Mich. 1976. In prosecution for forcible rape and gross indecency, evidence tending to show a plan or scheme on part of defendant in previous encounters with other women to orchestrate events surrounding rape so that nonconsent could not be shown was “material” within meaning of statute permitting evidence, under certain circumstances, of other acts of defendant. *M.C.L.A. §§ 750.338b, 750.520, 750.520a et seq., 768.27*.—*People v. Oliphant*, 250 N.W.2d 443, 399 Mich. 472.—Crim Law 372(7).

Mich.App. 1998. Undisclosed evidence is “material,” for purposes of alleged *Brady* violation, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *U.S.C.A. Const.Amend. 14*.—*People v. Lester*, 591 N.W.2d 267, 232 Mich.App. 262, appeal denied 602 N.W.2d 388, 461 Mich. 861.—Crim Law 700(2.1).

Mich.App. 1996. Will-drafting attorney’s false testimony given during probate court deposition, that attorney witnessed decedent sign forged will, was “material” to probate proceeding, for purposes of perjury prosecution, in that false testimony affected Attorney General’s investigation. *M.C.L.A. § 750.423*.—*People v. Kozyra*, 556 N.W.2d 512, 219 Mich.App. 422, appeal denied 575 N.W.2d 548, 456 Mich. 931.—Perj 11(2).

Mich.App. 1996. Insured’s statement is “material,” for purposes of determining whether insurance policy can be voided for misrepresentation of material fact, if statement is reasonably relevant to insurer’s investigation of claim.—*Mina v. General Star Indem. Co.*, 555 N.W.2d 1, 218 Mich.App. 678,

reversed in part 568 N.W.2d 80, 455 Mich. 866.—Insurance 3185.

Mich.App. 1994. In deciding whether insured's misrepresentation is "material" so as to permit insurer to rescind insurance contract, court is not concerned with whether insurer would have charged increased premium but for misrepresentation; rather, court's inquiry is limited to whether insurer would have rejected application altogether had true facts been known. M.C.L.A. § 500.2218(1).—Zulcosky v. Farm Bureau Life Ins. Co. of Michigan, 520 N.W.2d 366, 206 Mich.App. 95, appeal denied 534 N.W.2d 519, 448 Mich. 929, appeal after remand 1997 WL 33354561, appeal denied 572 N.W.2d 662, 456 Mich. 910.—Insurance 2958.

Mich.App. 1977. Within statute requiring that offeror in connection with takeover offer provide "material information," such is anything of which average prudent investor ought reasonably to be informed before deciding whether to buy, sell or hold affected security and if reasonable investor would consider particular item of information important in making such decision, that item is "material" per se. M.C.L.A. §§ 451.901–451.917, 451.908, 451–908(1)(c, h); GCR 1963, 711.2, 711.4.—Gerber Products Co. v. Anderson, Clayton & Co., 256 N.W.2d 754, 76 Mich.App. 410.—Sec Reg 272.

Minn. 2000. Evidence is "material," for purposes of a defendant's due process right to disclosure of material evidence, where there is a reasonable probability that the result of the proceeding would have been different if the evidence had been disclosed to the defense. U.S.C.A. Const.Amend. 14.—State v. Gates, 615 N.W.2d 331.—Const Law 268(5).

Minn. 2000. Evidence in criminal case is "material," for purposes of *Brady* rule requiring prosecution to disclose all material evidence that is favorable to accused, if there is a reasonable probability that, had it been disclosed, the result of the trial would have been different. U.S.C.A. Const. Amend. 14; 49 M.S.A., Rules Crim.Proc., Rule 9.01, subd. 1(2, 7).—Woodruff v. State, 608 N.W.2d 881.—Crim Law 700(2.1).

Minn. 1998. Evidence held by prosecutor is "material" to defendant's guilt only if there is a reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—State v. Wildenberg, 573 N.W.2d 692.—Crim Law 700(2.1).

Minn. 1996. Fact is "material" for summary judgment purposes if its resolution will affect outcome of case. 48 M.S.A., Rules Civ.Proc., Rule 56.03.—O'Malley v. Ulland Bros., 549 N.W.2d 889, rehearing denied.—Judgm 181(2).

Minn. 1979. For a candidate to imply that he has support of political party, which support he does not in fact have, is a "material" violation of provision of election law. M.S.A. §§ 209.02, subd. 1, 210A.02.—Schmitt v. McLaughlin, 275 N.W.2d 587.—Elections 311.1.

Minn.App. 2001. A fact is "material," for purposes of a summary judgment motion, if its resolution will affect the outcome of the case. 48 M.S.A., Rules Civ.Proc., Rule 56.03.—Bebo v. Delander, 632 N.W.2d 732, review denied.—Judgm 181(2).

Minn.App. 1997. Test for determining whether change or variance is "material" is whether change gives bidder substantial advantage or benefit not enjoyed by others for purposes of principle that, once bid has been opened, public entity has no authority to make any "material" changes or modifications to bid.—Lovering-Johnson, Inc. v. City of Prior Lake, 558 N.W.2d 499.—Pub Contr 12.

Minn.App. 1997. Where municipal construction contract bid price was ambiguous due to bidder's insertion of plus signs for anticipated deduct alternate in bid form, price modification after bid opening was "material" and could not be waived as "irregularity," pursuant to bid instructions authorizing city to waive "irregularities."—Lovering-Johnson, Inc. v. City of Prior Lake, 558 N.W.2d 499.—Mun Corp 238.

Minn.App. 1997. Modifications in price affecting bid's amount are "material" for purposes of principle that, once bid has been opened, public entity has no authority to make any "material" changes to bid.—Lovering-Johnson, Inc. v. City of Prior Lake, 558 N.W.2d 499.—Pub Contr 12.

Minn.App. 1993. Variance from public contract bidding requirement is "material" if it gives bidder substantial advantage or benefit not enjoyed by other bidders.—Byrd v. Independent School Dist. No. 194, 495 N.W.2d 226, review denied.—Pub Contr 10.

Minn.App. 1987. A contract is voidable if party's assent is induced by either a fraudulent or a material misrepresentation by the other party, and is an assertion in which the recipient is justified in relying; a "misrepresentation" is "fraudulent" if it is intended to induce a contract and either is known to be false or made without knowledge of whether it is true or false; a misrepresentation is "material" if it would be likely to induce a reasonable person to manifest his or her assent or the maker knows that for some special reason it is likely to induce the particular recipient to manifest such assent.—Carpenter v. Vreeman, 409 N.W.2d 258.—Contracts 94(2), 94(3), 94(5), 98.

Miss. 2002. A fact is "material" for purposes of summary judgment if it tends to resolve any of the issues properly raised by the parties and matters in an outcome determinative sense.—Adams v. Cinemark USA, Inc., 831 So.2d 1156.—Judgm 181(2).

Miss. 2002. Presence of fact issue in record does not per se entitle party to avoid summary judgment; court must be convinced that fact issue is "material," which is one that matters in outcome determinative sense. Rules Civ.Proc., Rule 56(c).—Lewallen v. Slawson, 822 So.2d 236, rehearing denied.—Judgm 181(2).

Miss. 2002. A fact is "material" for summary judgment purposes if it tends to resolve any of the issues, properly raised by the parties. Rules Civ.

Proc., Rule 56(c).—Wallace v. Town Of Raleigh, 815 So.2d 1203.—Judgm 181(2).

Miss. 1997. Evidence is “material,” so that its nondisclosure would violate defendant’s due process rights, if there is reasonable probability that, had the evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—De La Beckwith v. State, 707 So.2d 547, rehearing denied, certiorari denied 119 S.Ct. 187, 525 U.S. 880, 142 L.Ed.2d 153, habeas corpus denied Beckwith v. Anderson, 89 F.Supp.2d 788.—Const Law 268(5).

Miss. 1997. Motion for summary judgment lies only where there is no genuine issue as to any material fact; fact is “material” if it tends to resolve any of issues properly raised by parties.—Diogenes Editions, Inc. v. State By and Through Bd. of Trustees of Institutions of Higher Learning, 700 So.2d 316.—Judgm 181(2).

Miss. 1995. Under *Bagley*, evidence withheld by government is “material,” as would require reversal of conviction, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—King v. State, 656 So.2d 1168, appeal after new trial 784 So.2d 884.—Crim Law 1166(10.10).

Miss. 1993. Fact is “material,” for purposes of summary judgment motion, if it tends to resolve any of issues properly raised by parties. Rules Civ. Proc., Rule 56.—Morgan v. City of Ruleville, 627 So.2d 275.—Judgm 181(2).

Miss. 1988. For summary judgment purposes, fact issue is “material” if it tends to resolve any of issues properly raised by parties.—Grisham v. John Q. Long V.F.W. Post, No. 4057, Inc., 519 So.2d 413.—Judgm 181(2).

Miss.App. 2001. Defendant’s statements relating to his having consumed gin and smoking marijuana during lunch recess of domestic violence trial were “material” to proceeding, as was required for perjury conviction; the combined assertions, whether true or not, had potential to delay jury’s investigation of whether he was guilty of domestic violence charges brought against him. West’s A.M.C. § 97-9-59.—Hammett v. State, 797 So.2d 258.—Perj 11(1).

Miss.App. 1999. Fact is “material,” for summary judgment purposes, if it tends to resolve any of issues properly raised by parties. Rules Civ. Proc., Rule 56(c).—Powell v. Cohen Realty, Inc., 803 So.2d 1186.—Judgm 181(2).

Mo. 2001. State has duty to disclose plea agreements negotiated with state witnesses, and if state fails to do so, state violates defendant’s right to due process if undisclosed evidence is material; evidence is “material” if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding might have been different.—Hutchison v. State, 59 S.W.3d 494.—Const Law 268(5); Crim Law 700(4).

Mo. 1997. Verdict director instruction appropriately defined representation as “material,” for pur-

poses of statute prohibiting the making of false material representation for purpose of obtaining or denying any workers’ compensation benefit, as representation that might reasonably influence or have natural tendency to influence person to whom representation was made to take particular action, or decline to take particular action, with regard to claim. V.A.M.S. § 287.128, subd. 1(8); MAI Criminal 3d No. 304.02.—State v. Barnes, 942 S.W.2d 362, rehearing denied.—Work Comp 2080.

Mo. 1997. Even though information charging first-degree murder alleged that defendant acted with accomplice who was not mentioned in verdict director jury instruction, such variance was neither “material” nor “prejudicial”; whether or not defendant was “acting with another” when he committed murder in no way vitiated fact that he was apprised by information that he had been implicated in murder, and argument that state should have instructed jury to find him guilty if he or another person with whom he acted committed murder was contrary to defense strategy.—State v. Whitfield, 939 S.W.2d 361, rehearing denied, certiorari denied 118 S.Ct. 97, 522 U.S. 831, 139 L.Ed.2d 52, denial of habeas corpus affirmed Whitfield v. Bowersox, 324 F.3d 1009.—Crim Law 814(19), 1172.6.

Mo. 1997. Variances between information and jury instructions are “material” when they affect whether accused received adequate notice; variances are “prejudicial” when they affect defendant’s ability to defend against charges.—State v. Whitfield, 939 S.W.2d 361, rehearing denied, certiorari denied 118 S.Ct. 97, 522 U.S. 831, 139 L.Ed.2d 52, denial of habeas corpus affirmed Whitfield v. Bowersox, 324 F.3d 1009.—Crim Law 814(1), 1172.6.

Mo. 1994. Evidence is “material,” for purposes of determining whether it should have been disclosed by prosecution to defense under *Brady*, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—State v. Wise, 879 S.W.2d 494, certiorari denied 115 S.Ct. 757, 513 U.S. 1093, 130 L.Ed.2d 656, denial of habeas corpus affirmed Wise v. Bowersox, 136 F.3d 1197, certiorari denied 119 S.Ct. 560, 525 U.S. 1026, 142 L.Ed.2d 466, rehearing denied 119 S.Ct. 920, 525 U.S. 1129, 142 L.Ed.2d 916.—Crim Law 700(2.1).

Mo.App. E.D. 2000. Questions and answers pertaining to prospective juror’s prior litigation experience are “material” for purposes of rule that bias and prejudice are presumed from juror’s intentional nondisclosure of material information during voir dire.—Doyle v. Kennedy Heating and Service, Inc., 33 S.W.3d 199, rehearing, transfer denied.—Jury 131(18).

Mo.App. E.D. 1996. “Positive representation,” required to be made by government entity before action ex contractu in nature of breach of warranty may be brought against entity, is “material” if reasonable person would attach importance to representation in determining choice of action in transaction in question.—St. Louis Air Cargo Services, Inc. v. City of St. Louis, 929 S.W.2d 821, rehearing,

transfer denied, and transfer denied.—Pub Contr 23.

Mo.App. E.D. 1996. New trial is not warranted by prosecutor's failure to comply with required discovery unless undisclosed evidence is "material," meaning that there is reasonable probability that, had the evidence been disclosed to defense, result might have been different.—State v. Kezer, 918 S.W.2d 874, rehearing, transfer denied, and transfer denied.—Crim Law 627.8(6).

Mo.App. E.D. 1991. Misrepresentation of fact is "material," and will permit insurer to avoid policy, if fact is one which, if stated truthfully, might reasonably have influenced insurer to accept or reject risk or to charge different premium.—Farley v. St. Charles Ins. Agency, Inc., 807 S.W.2d 168.—Insurance 2958.

Mo.App. E.D. 1990. Defendant's testimony at prior child abuse proceeding, that he had admitted to abusing child only upon threats of social workers that this was the only way he could get children back, was "material" to child abuse investigation and would, if false, be sufficient to support perjury charge.—State v. Sumowski, 792 S.W.2d 381, rehearing, transfer denied.—Perj 11(2).

Mo.App. S.D. 1999. Evidence that state failed to disclose to defense is "material," where there was a general request for disclosure, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result would have been different. V.A.M.R. 25.03(A)(9).—State v. Myers, 997 S.W.2d 26, rehearing, transfer denied, and transfer denied.—Crim Law 700(2.1).

Mo.App. S.D. 1989. Whether concealment of information in insurance application was "material" depended upon whether fact concealed, if stated truthfully, "might reasonably have influenced" insurance company to accept or reject the risk or to have charged a different premium, not whether fact concealed "would have" so influenced insurance company.—Meeker v. Shelter Mut. Ins. Co., 766 S.W.2d 733.—Insurance 2964.

Mo.App. W.D. 1999. Under *Brady* rule, evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—State v. Albanese, 9 S.W.3d 39, rehearing denied.—Crim Law 700(2.1).

Mo.App. W.D. 1999. *Brady* evidence is "material," so as to warrant new trial, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—State v. Aaron, 985 S.W.2d 434, denial of post-conviction relief affirmed 81 S.W.3d 682.—Crim Law 919(1).

Mo.App. W.D. 1995. Test of materiality of misrepresentation is objective; misrepresentation is "material" if it would be likely to induce reasonable person to manifest his assent, or if maker knows that it would be likely to induce recipient to do so.—Grossoehme v. Cordell, 904 S.W.2d 392, re-

hearing, transfer denied, and transfer denied.—Fraud 18.

Mo.App. W.D. 1993. Instruction which stated that representation in application for insurance coverage is "material" if facts represented, had they been stated truthfully, might reasonably have influenced insurer to accept or reject risk or to have charged different premium provided proper definition of term "material" under the law, and thus could not have misdirected, misled, or confused jury in action by insureds for vexatious refusal to pay claim.—Mears v. Columbia Mut. Ins. Co., 855 S.W.2d 389, rehearing, transfer denied.—Insurance 3579.

Mo.App. 1978. Testimony tending to prove or disprove facts in issue was "relevant", and it was "material" where it was both relevant and had bearing on substantial matters in dispute.—State v. Stamps, 569 S.W.2d 762.—Crim Law 338(1), 382.

Mo.App. 1967. Where loan to borrower was conditioned upon signature of the loan instrument by borrower's wife, borrower's representation to loan company that signatures upon instruments were those of the wife was "material" within elements of fraud.—Universal C. I. T. Credit Corp. v. Tatro, 416 S.W.2d 696.—Fraud 18.

Mo.App. 1953. A representation is "material" if it relates directly to matter in controversy and is of such nature that ultimate result would not have followed if there had been no representation or if one who acted upon it had been aware of its falsity.—Schoen v. Lange, 256 S.W.2d 277.—Fraud 18.

Mo.App. 1940. Every fact untruly asserted or wrongfully suppressed by an insured must be regarded as "material" if the knowledge or ignorance of it would naturally influence the judgment of the insurer in making the contract at all, or in estimating the degree and character of the risk, or in fixing the rate of the premium.—Chambers v. Metropolitan Life Ins. Co., 138 S.W.2d 29, 235 Mo.App. 884.—Insurance 2958.

Mo.App. 1909. Iron castings from 10 to 24 feet in length, known as "sill castings or channels," were furnished to a tobacco company with the necessary bolts for use in its factories, to support tobacco presses. Most of them were used for supporting presses or tables connected therewith, without being fastened to the floor and without being put under all the presses. Some were used for other purposes, such as skids, and "dunnage"; that is, were put under goods to raise them above the floor. Those under presses and tables could be readily removed, and were in fact taken from one building to another. There was no proof that they were customarily thus placed in tobacco factories, or were in any way necessary to carry on the work, or that it could not be done as well without them. *Held*, that the castings were not "material" or "machinery," within Rev.St.1899, § 4203, V.A.M.S. § 429.010, giving a lien to a person furnishing the same for a building.—Banner Iron Works v. Aetna Iron Works, 122 S.W. 762, 143 Mo.App. 1.—Mech Liens 32.

Mo.App. 1905. "Material" is defined by Webster to mean something essential.—*Faulkner v. Bridget*, 86 S.W. 483, 110 Mo.App. 377.

Mont. 2003. For purposes of summary judgment, disputed facts are "material" if they involve elements of cause of action or defenses at issue to extent that necessitates resolution of issue by trier of fact. Rules Civ.Proc., Rule 56(c).—*Mountain West Bank, N.A. v. Mine and Mill Hydraulics, Inc.*, 64 P.3d 1048, 314 Mont. 248, 2003 MT 35.—Judgm 181(2).

Mont. 2002. Even assuming that interview with alleged sexual assault victim, which was not disclosed to the accused, was exculpatory, the interview was not "material" evidence, as element of *Brady* due process violation; the evidence was cumulative, deputy county attorney testified that while she considered the transcript of the interview when reducing and dropping the charges against the accused, it was another interview with alleged victim that most influenced her decision to reduce or drop the charges, and she testified that due to her case load at that time she had not had the opportunity to review the accused's file until he filed a motion to dismiss the charges, and thus, timely disclosure would not have changed whether charges were dismissed or when the accused was released from jail while awaiting trial. U.S.C.A. Const.Amend. 14.—*Hiebert v. Cascade County*, 56 P.3d 848, 311 Mont. 471, 2002 MT 233.—Const Law 268(5); Crim Law 700(3).

Mont. 2002. Evidence is "material," as element of *Brady* due process violation relating to State's failure to disclose material exculpatory evidence, if there is a reasonable probability that the result would have been different had the evidence been disclosed to the defense. U.S.C.A. Const.Amend. 14.—*Hiebert v. Cascade County*, 56 P.3d 848, 311 Mont. 471, 2002 MT 233.—Const Law 268(5).

Mont. 2002. Cumulative evidence is not considered "material" evidence, as element of *Brady* due process violation relating to State's failure to disclose material exculpatory evidence. U.S.C.A. Const.Amend. 14.—*Hiebert v. Cascade County*, 56 P.3d 848, 311 Mont. 471, 2002 MT 233.—Const Law 268(5).

Mont. 1998. In order to mandate reversal of defendant's conviction, *Brady* violation must relate to "material" information; that is, defendant must prove that there is reasonable probability that, had information been provided, result would have been different or, stated another way, it is asked whether verdict is worthy of confidence.—*State v. Berger*, 964 P.2d 725, 290 Mont. 78, 1998 MT 170.—Crim Law 1166(10.10).

Mont. 1995. Disputed facts are "material" for purposes of summary judgment motion if they involve elements of cause of action or defense at issue to an extent that necessitates resolution of issue by trier of fact. Rules Civ.Proc., Rule 56.—*Motarie v. Northern Montana Joint Refuse Disposal Dist.*, 907 P.2d 154, 274 Mont. 239.—Judgm 181(2).

Mont. 1995. For purposes of regulation which requires that Board of Labor Appeals (BOLA) include in record and consider as evidence in unemployment compensation proceeding all records of Department of Labor and Industry that are material to issues before it, "material" records are those records which are relevant to, and necessary for, determination of issues presented to BOLA. Mont. Admin. R. 24.7.306(1).—*Bean v. State, Bd. of Labor Appeals*, 891 P.2d 516, 270 Mont. 253, appeal after remand 965 P.2d 256, 290 Mont. 496, 1998 MT 222.—Social S 620.15.

Mont. 1927. General rule is that, when bond mentions only "material," surety is liable only for payment of that which has gone into and become part of completed work; "supplies."—*Gary Hay & Grain Co. v. Fidelity & Deposit Co. of Maryland*, 255 P. 722, 79 Mont. 111.—Princ & S 77.

Mont. 1927. General rule is that, when bond mentions only material, surety is liable for payment for that which has gone into and becomes part of completed work and not all supplies furnished, since "supplies" is broader term than "materials" and means that which is or can be supplied, sufficient for use or need, a quantity of something supplied or on hand, whereas "material" means substance matter of which a thing is made.—*Gary Hay & Grain Co. v. Fidelity & Deposit Co. of Maryland*, 255 P. 722, 79 Mont. 111.

Neb. 1998. Under statute governing discovery in criminal cases, evidence is "material" when there is a strong indication that it will play an important role in, among other things, assisting impeachment or rebuttal. Neb.Rev.St. § 29–1912.—*State v. Lotter*, 586 N.W.2d 591, 255 Neb. 456, opinion modified on denial of rehearing 587 N.W.2d 673, 255 Neb. 889, certiorari denied 119 S.Ct. 2056, 526 U.S. 1162, 144 L.Ed.2d 222, certiorari denied 119 S.Ct. 2056, 526 U.S. 1162, 144 L.Ed.2d 222.—Crim Law 627.6(1).

Neb. 1993. The two components of "relevant evidence" are materiality and probative value; fact that is of consequence is "material," and evidence that affects probability that fact is as party claims it to be has "probative force". Neb.Rev.St. § 27–401.—*State v. Lowe*, 505 N.W.2d 662, 244 Neb. 173, post-conviction relief granted 533 N.W.2d 99, 248 Neb. 215.—Crim Law 338(1), 382.

Neb. 1993. Potential testimony of high school student in murder prosecution who initially claimed to have been present at murder scene and that voice she heard did not belong to defendant, was not "material," and, thus, state's failure to reveal her existence in pretrial discovery in response to request for all *Brady* material or anything exculpatory was not constitutional error; student recanted her claim of presence at murder scene and student never claimed to have been in position to see that defendant was not present at scene or that he did not shoot victims.—*State v. Boppre*, 503 N.W.2d 526, 243 Neb. 908.—Crim Law 700(3).

Neb. 1952. A variance between a pleading and evidence adduced to sustain it is not deemed "material" unless it has misled adverse party to his

prejudice in maintaining his action or defense on the merits.—*Segebart v. Gregory*, 55 N.W.2d 678, 156 Neb. 261.—Plead 388.

Neb. 1943. A statutory highway construction bond curing payment by contractor of all just claims for “material”, and “labor”, etc., secured payment of rental charges for equipment supplied original contractor, for cost of transportation of equipment to and from work, and for fee for supervisory services. *Comp.St.*1929, § 52–118.—*Peter Kiewit Sons’ Co. v. National Cas. Co.*, 8 N.W.2d 192, 142 Neb. 835.—High 113(5).

Neb. 1899. Under a statute giving a lien to any person who shall perform any labor or furnish any material for a building, the word “material” means the manufactured material furnished by delivering it on the premises, and in condition to go into the building, and does not mean merely the raw material, such as the ore in the mines, or the trees out of which the lumber is made.—*Grand Island Banking Co. v. Koehler*, 78 N.W. 265, 57 Neb. 649.

Neb.App. 1993. Provision in rehabilitative plan is “material” to rehabilitation of parent, as required to support termination of parental rights for non-compliance with plan, if such provision tends to correct, eliminate or ameliorate situation or condition on which adjudication is obtained under juvenile code. *Neb.Rev.St.* § 43–292(6).—*In Interest of R.W.*, 509 N.W.2d 237, 2 Neb.App. 297.—*Infants* 155.

Nev. 2001. If a defendant shows that evidence the State failed to gather was “material,” i.e., that there is a reasonable probability that the result of the proceedings would have been different if the evidence had been available, the court must determine whether the failure to gather it resulted from negligence, gross negligence, or bad faith; in the case of mere negligence no sanctions are imposed but the defendant can examine the State’s witnesses about the investigative deficiencies, in the case of gross negligence the defense is entitled to a presumption that the evidence would have been unfavorable to the State, and in the case of bad faith, depending on the case as a whole, dismissal of the charges may be warranted.—*Randolph v. State*, 36 P.3d 424, 117 Nev. 970, rehearing denied, certiorari denied 123 S.Ct. 183, 154 L.Ed.2d 72.—*Crim Law* 318, 700(9), 752.5.

Nev. 2001. Evidence withheld by the prosecutor is “material” for purposes of the *Brady* interpretation of the due process clause, if there is a reasonable probability that the result would have been different if it had been disclosed; such a reasonable probability is shown when the nondisclosure undermines confidence in the outcome of the trial. U.S.C.A. Const.Amend. 14.—*Evans v. State*, 28 P.3d 498, 117 Nev. 609, rehearing denied.—*Crim Law* 700(2.1).

Nev. 2000. Where the state fails to provide evidence which the defense did not request or requested generally, it is constitutional error if the omitted evidence creates a reasonable doubt which did not otherwise exist; in other words, evidence is “material” if there is a reasonable probability that

the result would have been different if the evidence had been disclosed. U.S.C.A. Const.Amend. 14.—*Mazzan v. Warden, Ely State Prison*, 993 P.2d 25, 116 Nev. 48.—*Crim Law* 700(2.1).

Nev. 2000. After a specific request for evidence, a *Brady* violation is “material” if there is a reasonable possibility that the omitted evidence would have affected the outcome. U.S.C.A. Const. Amend. 14.—*Mazzan v. Warden, Ely State Prison*, 993 P.2d 25, 116 Nev. 48.—*Crim Law* 700(2.1).

Nev. 1999. Prosecution’s *Brady* violation in failing, until morning of jailhouse informant’s testimony, to provide the defense with notes made by jailhouse informant was not “material,” where defense engaged in blistering cross-examination of informant by repeatedly attacking his credibility, exploring his prior conviction, exposing his motive for testifying, and revealing that information in defendant’s alleged confession to informant was available from newspaper, and thus, defendant was not denied a fair trial. U.S.C.A. Const.Amend. 14.—*Schlafer v. State*, 979 P.2d 712, 115 Nev. 167.—*Crim Law* 700(2.1).

Nev. 1998. Due process requires the State to disclose material evidence favorable to the defense; evidence is “material” when there is a reasonable probability that had the evidence been available to the defense, the result of the proceeding would have been different.—*Steese v. State*, 960 P.2d 321, 114 Nev. 479.—*Const Law* 268(5).

Nev. 1998. When seeking dismissal of charges based on state’s failure to gather evidence, defendant must show that the evidence was “material,” such that there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different.—*Daniels v. State*, 956 P.2d 111, 114 Nev. 261.—*Crim Law* 700(9).

Nev. 1996. *Brady* violation for prosecution’s failure to disclose exculpatory evidence occurring after specific request is “material” if there exists reasonable possibility that claimed evidence would have affected judgment of trier of fact and thus outcome of trial.—*Jimenez v. State*, 918 P.2d 687, 112 Nev. 610.—*Crim Law* 700(2.1).

Nev. 1994. Witness is not “material” merely because one party designates that witness as such for purposes of statute authorizing trial court to issue certificate summoning out-of-state witness to testify in criminal prosecution in the state if witness is “material” to party’s case; for purposes of the statute, showing of materiality must be made. N.R.S. 174.425.—*Bell v. State*, 885 P.2d 1311, 110 Nev. 1210.—*Witn* 6.

N.H. 2003. An issue of fact is “material” for summary judgment purposes if it affects the outcome of the litigation. RSA 491:8-a.—*Weeks v. Co-operative Ins. Companies*, 817 A.2d 292, rehearing denied.—*Judgm* 181(2).

N.H. 2002. Disputed fact is “material,” for purposes of summary judgment, if it affects outcome of litigation under applicable substantive law.—*Palmer*

v. Nan King Restaurant, Inc., 798 A.2d 583, 147 N.H. 681.—Judgm 181(2).

N.H. 2002. An issue of fact is “material” for summary judgment purposes if it affects the outcome of the litigation. RSA 491:8-a, subd. IV.—Panciocco v. Lawyers Title Ins. Corp., 794 A.2d 810, 147 N.H. 610.—Judgm 181(2).

N.H. 1999. Disputed fact is “material” for purposes of summary judgment if it affects outcome of litigation under applicable substantive law. RSA 491:8-a, subd. 3.—Sandford v. Town of Wolfeboro, 740 A.2d 1019, 143 N.H. 481, rehearing denied.—Judgm 181(2).

N.H. 1999. Omitted information is “material,” for purposes of commodities fraud claim, if there is a substantial likelihood that, under all the circumstances, it would have assumed actual significance in the deliberations of the reasonable investor.—Merrill Lynch Futures, Inc. v. Sands, 727 A.2d 1009, 143 N.H. 507.—Com Fut 17.

N.H. 1999. Senior strategist’s subjective commentary about lumber futures was not “material” to investor’s decision to invest in lumber futures, and commodities broker’s withholding of that information was therefore not commodities fraud, given that investor was experienced and had previously established risky positions in various commodities, investor was privy to considerable information concerning the commodities market, and investor was aware of the market’s volatility.—Merrill Lynch Futures, Inc. v. Sands, 727 A.2d 1009, 143 N.H. 507.—Com Fut 17.

N.H. 1996. Issue of fact is “material” for purposes of summary judgment if it affects outcome of litigation under applicable substantive law.—New England Tel. & Tel. Co. v. City of Franklin, 685 A.2d 913, 141 N.H. 449.—Judgm 181(2).

N.H. 1976. Accused’s false testimony that she had no knowledge that dead goose was in her freezer and that she had never discussed killing of goose by her boyfriend or disposal of goose with any officer was “material” within statute providing that “Whoever, in a trial * * * in which the making or subscribing of a statement is required or authorized by law, makes or subscribes a material statement under oath * * * when in fact the witness or declarant does not believe that the statement is true or knows that it is not true or intends thereby to avoid or obstruct the ascertainment of the truth, is guilty of ‘perjury’.” * * *. RSA 575:1, Laws 1927, c. 33, § 1; RSA 587:1-a, 587:1-d(2), Laws 1967, c. 358, § 1.—State v. Gage, 366 A.2d 501, 116 N.H. 656.—Perj 11(2).

N.H. 1956. While chinchillas and animals may not be “material” in ordinary sense of that word, they are “property” within valuation condition of fire policy limiting insured’s recovery to actual cash value of property at time of loss, with proper deduction for depreciation, and providing that in no event shall it exceed what it would cost to repair or replace same with material of like kind and quality.—Pinet v. New Hampshire Fire Ins. Co., 126

A.2d 262, 100 N.H. 346, 61 A.L.R.2d 706.—Insurance 2183.

N.H. 1945. In bill or on motion for discovery of evidence, production will be ordered if court can fairly find that it may in any way be material to plaintiff’s cause, and “material” in this context may refer simply to proper preparation of case.—LeFebvre v. Somersworth Shoe Co., 41 A.2d 924, 93 N.H. 354.—Pretrial Proc 31.

N.J. 2002. A risk would be deemed “material,” under the prudent patient or materiality of risk standard of informed consent, when a reasonable patient, in what the physician knows or should know to be the patient’s position, would be likely to attach significance to the risk or cluster of risks in deciding whether to forgo the proposed therapy or to submit to it.—Howard v. University of Medicine and Dentistry of New Jersey, 800 A.2d 73, 172 N.J. 537.—Health 906.

N.J. 1999. Evidence is “material” for *Brady* purposes if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—State v. Martini, 734 A.2d 257, 160 N.J. 248.—Crim Law 700(2.1).

N.J. 1999. Allegedly mitigating evidence omitted from penalty phase of capital murder prosecution was not “material” for *Brady* purposes, where, although evidence had some mitigating value, evidence itself had potential to negatively influence jury, and presentation of evidence would afford State the opportunity to present damaging rebuttal evidence, albeit subject to limiting instruction. U.S.C.A. Const.Amend. 14.—State v. Martini, 734 A.2d 257, 160 N.J. 248.—Sent & Pun 1746.

N.J. 1997. Evidence is “material” for *Brady* purposes if there is reasonable probability that, had it been disclosed to defense, result of proceeding would have been different.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(2.1).

N.J. 1997. Internal memorandum from state investigator to prosecutor concerning lodging and meals provided to family of key prosecution witness in murder trial and an accounting of expenses incurred in that regard by state investigator were not “material” for *Brady* purposes; there was no reasonable possibility that different verdict would have arisen had documents been introduced, as any possible incremental effect on witness’ credibility from additional revelation that financial accommodations were made to support his family would have been merely cumulative.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(4).

N.J. 1997. Assuming existence of information concerning cooperation of key government witness in murder trial with federal law enforcement authorities in connection with unrelated criminal investigations in other jurisdictions, such information was not “material” for *Brady* purposes, where such information would have been immaterial to outcome of trial.—State v. Marshall, 690 A.2d 1, 148

N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(4).

N.J. 1997. Evidence, allegedly in state's possession, that murder codefendant who entered into plea agreement in exchange for his testimony against defendant was dangerous was not "material" for *Brady* purposes; such evidence would not have affected outcome of trial, in view of jury's knowledge that codefendant was conspirator in plot to commit murder.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Evidence tending to cast doubt upon testimony of one codefendant concerning participation of another codefendant in murder-for-hire scheme was not "material" to outcome of trial of defendant who instigated scheme, for purpose of determining whether *Brady* violation resulted from state's failure to disclose such evidence; jury's acquittal of second codefendant demonstrated that it had not believed testimony sought to be impeached.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(4).

N.J. 1997. Additional information pertaining to credibility of murder codefendant's alibi witnesses was not "material" for *Brady* purposes, despite defendant's argument that evidence enhancing credibility of codefendant's alibi witnesses had effect of discrediting another codefendant.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(4).

N.J. 1997. State's failure to produce police reports of investigation into private investigator hired by defense counsel was not "material" for *Brady* purposes; reports at issue disclosed no information materially affecting investigator's credibility, and mere fact that investigator was investigated by state revealed no more than that state engaged in thorough preparation for trial.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Memorandum from police investigator to assistant prosecutor, summarizing additional investigation of premises on which evidence was found, was not "material" for *Brady* purposes; testimony which murder defendant claimed would have been elicited had he had access to evidence contained in memorandum would have been merely duplicative of other evidence and testimony introduced at trial and could not conceivably have changed outcome of trial.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. *Miranda* form signed by girlfriend of murder defendant before her interrogation was not "material" for *Brady* purposes; only purported relevance of form was defendant's allegation that it was at variance with state's willingness to vouch for girlfriend's credibility at trial.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Receipts reflecting silver purchases made by murder defendant and his girlfriend were not "material" for *Brady* purposes; alleged significance of receipts derived only from fact that defense counsel questioned girlfriend concerning date she rented safe deposit box to hold silver, and such subject and supporting document were too tangential to central issue of murder to have had any effect on result of trial.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Affidavits and related search warrants for telephone toll records of murder defendant's girlfriend were not "material" for *Brady* purposes, as state's failure to produce them had no capacity to affect result of trial; documents were not included within scope of trial court's discovery order governing remand hearing, and affidavits contained relatively boilerplate allegations summarizing investigation to date and defendant's relationship with girlfriend, and alleging that access to defendant's and girlfriend's telephone toll records would lead to identification of persons responsible for death of defendant's wife.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Prosecutor's notes of preparatory interviews with murder defendant's girlfriend, allegedly significant because of their reference to potential interest of prosecutor's office in any link between murder under investigation and another murder, were not "material" for *Brady* purposes; notes were in all probability not discoverable, and their content had no capacity to affect result of trial.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Copies of report of physician who examined defendant on night of murder and copies of defendant's treatment records from hospital emergency room were not "material" for *Brady* purposes; evidence at trial incontrovertibly established extent of defendant's injuries at crime scene, and critical issue was not how badly defendant was injured, but whether assault on defendant was staged to avert suspicion of motive for homicide.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Copies of documents concerning murder defendant's indebtedness and financial resources were not "material" for *Brady* purposes, as state's failure to produce them had no capacity to materially affect result of trial; disclosure of documents would not have materially enhanced defendant's ability to demonstrate that his debts were not burdensome, and information in documents related to defendant's income and assets and evidencing his ability to meet financial obligations was cumulative of testimony produced by defendant at trial.—State v. Marshall, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Contents of files of attorney whom murder victim had retained to advise her concerning problems in her marriage were not “material” for *Brady* purposes, despite defendant’s contention that their production would have assisted defense counsel in rebutting state’s contention that defendant had amassed life insurance coverage on victim without her knowledge and consent; defendant acknowledged at trial that he had made decisions about insurance purchases and had been authorized by victim to make those decisions and to sign her name to applications for insurance, and handwritten notes in attorney’s file would not have been useful to establish whether victim actually knew details of family’s life insurance portfolio.—*State v. Marshall*, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Documents concerning acquisition of accidental-death policies on lives of murder defendant and victim were not “material” for *Brady* purposes; defense counsel’s cross-examination of insurer’s employee who testified at trial about issuance of policies would not have been materially enhanced by documents in question.—*State v. Marshall*, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Qualifications and expert’s report with respect to assistant director of state police laboratory, who allegedly examined signatures on some of murder victim’s life insurance policy applications but offered no testimony at trial concerning them, were not “material” for *Brady* purposes.—*State v. Marshall*, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Pleadings and supporting documents filed with another jurisdiction in support of state’s applications to extradite various individuals with respect to murder trial were not “material” for *Brady* purposes, absent any explanation by defendant of materiality of such documents or specification of nature of prejudice allegedly suffered by him as result of state’s failure to disclose such documents; documents contained no significant information not otherwise available to defense counsel.—*State v. Marshall*, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Letter from murder defendant to jail official, unidentified memorandum concerning defendant’s relationships with women, source of state’s information about conversation between defendant and his sons concerning woman, and memoranda reflecting state’s investigation concerning status of victim’s ashes and its investigation of defendant’s other posthomicide conduct were not “material” for *Brady* purposes.—*State v. Marshall*, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1997. Memoranda of state’s interviews with murder defendant’s girlfriend that allegedly sug-

gested connection between murder at issue and another murder, various investigative notes made by state investigators, information possessed by two individuals on state’s witness list who never testified at trial, and mailing list prepared from list of participants in raffle were not “material” for *Brady* purposes.—*State v. Marshall*, 690 A.2d 1, 148 N.J. 89, certiorari denied 118 S.Ct. 140, 522 U.S. 850, 139 L.Ed.2d 88.—Crim Law 700(3).

N.J. 1996. Exculpatory evidence is “material,” and consequently required to be presented to defendant under Supreme Court’s *Brady* decision “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” U.S.C.A. Const.Amend. 5, 14.—*State v. Knight*, 678 A.2d 642, 145 N.J. 233.—Crim Law 700(2.1).

N.J.Err. & App. 1932. Under statute making void conditional sale of fixtures not removable without material injury to freehold, word “material” in one sense means material injury to the structure, but it also connotes injury to the institution of which the structure is a part.—*Domestic Electric Co. v. Mezzaluna*, 162 A. 722, 109 N.J.L. 574.

N.J.Super.A.D. 2001. Misrepresentations to an insurance company which, if the truth were known, would affect the premium charged or exposure to the risks of providing the coverage are “material.”—*Palisades Safety & Ins. Ass’n v. Bastien*, 781 A.2d 1101, 344 N.J.Super. 319, certification granted 798 A.2d 1270, 172 N.J. 357, affirmed 814 A.2d 619, 175 N.J. 144.—Insurance 2958.

N.J.Super.A.D. 2001. An omitted fact in a proxy statement is “material” if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote; it is not necessary that the omitted fact or facts from a proxy statement would have changed the shareholders’ vote.—*Casey v. Brennan*, 780 A.2d 553, 344 N.J.Super. 83, certification denied 788 A.2d 773, 170 N.J. 389, certification granted 788 A.2d 773, 170 N.J. 389, certification denied 788 A.2d 773, 170 N.J. 389, affirmed 801 A.2d 245, 173 N.J. 177.—Corp 198(4).

N.J.Super.A.D. 2001. Evidence is considered “material” for *Brady* purposes if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*State v. Parsons*, 775 A.2d 576, 341 N.J.Super. 448.—Crim Law 700(2.1).

N.J.Super.A.D. 1999. Evidence suppressed by prosecution is considered “material” for purposes of *Brady* rule prohibiting prosecution from withholding material evidence favorable to defense, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*State v. Aguilar*, 730 A.2d 463, 322 N.J.Super. 175.—Crim Law 700(2.1).

N.J.Super.A.D. 1997. Evidence of child witness’s extensive psychiatric disorders and their impact upon his ability to perceive and to recount events accurately was “material” in murder prose-

cution and, thus, newly discovered evidence warranted new trial; although mental health records did not have direct bearing on whether murders actually took place, crucial issue was whether defendant was perpetrator, and entire answer to that issue was witness's identification of defendant.—*State v. Henries*, 704 A.2d 24, 306 N.J.Super. 512.—Crim Law 940.

N.J.Super.A.D. 1997. Evidence of child witness' extensive psychiatric disorders and their impact upon his ability to perceive and to recount events accurately in his identification testimony probably would have affected the verdict in murder prosecution and, thus, evidence was "material" and warranted new trial for newly discovered evidence; witness's trial testimony was replete with inconsistencies and its reliability was suspect, and had jury heard nature and extent of witness's mental disorders, substantial medication he was subjected to, and probable effects of disorders upon his cognitive abilities, questions about reliability of his observations and recall could have become insurmountable hurdles. R. 3:20-1.—*State v. Henries*, 704 A.2d 24, 306 N.J.Super. 512.—Crim Law 945(2).

N.J.Super.A.D. 1997. Where an asserted defect in a bid is "material," i.e., when a specific noncompliance constitutes a substantial and hence nonwaivable irregularity, public entity to which it has been submitted is without discretion in dealing with it, and bid must be rejected.—*Serenity Contracting Group, Inc. v. Borough of Fort Lee*, 703 A.2d 352, 306 N.J.Super. 151, certification denied 708 A.2d 65, 153 N.J. 214.—Pub Contr 10.

N.J.Super.A.D. 1997. Factors on which to focus in determining whether due process violation has occurred when there has been suppression, loss, or destruction of physical evidence include bad faith or connivance by government, whether evidence was sufficiently material to defense, and whether defendant was prejudiced; to be "material," evidence must both possess an exculpatory value that was apparent before it was destroyed, and be of such a nature that defendant would be unable to obtain comparable evidence by other reasonably available means. U.S.C.A. Const.Amend. 14.—*State v. Dreher*, 695 A.2d 672, 302 N.J.Super. 408, certification denied 702 A.2d 349, 152 N.J. 10, certification denied 702 A.2d 349, 152 N.J. 10, certiorari denied 118 S.Ct. 2353, 524 U.S. 943, 141 L.Ed.2d 723.—Const Law 268(5).

N.J.Super.A.D. 1992. Information from someone admittedly involved in criminal transaction must generally be deemed more than "merely cumulative, impeaching or contradictory," and must generally be regarded as "material" for purposes of new trial motion, although result may depend on quality and quantity of proofs at trial.—*State v. Robinson*, 601 A.2d 1162, 253 N.J.Super. 346, certification denied 611 A.2d 646, 130 N.J. 6.—Crim Law 938(1), 940.

N.J.Super.A.D. 1989. Seller's statement that he cannot timely deliver may amount to "anticipatory breach," depending upon whether seller's statement substantially impairs value of contract so as to

constitute "material" breach. N.J.S.A. 12A:2-610.—*Neptune Research & Development, Inc. v. Teknics Indus. Systems, Inc.*, 563 A.2d 465, 235 N.J.Super. 522.—Sales 170.

N.J.Super. 1928. Fire apparatus held not "material" or 'supplies' which city must purchase pursuant to competitive bidding (Act April 21, 1920, § 1 [P. L. p. 572]). Act April 21, 1920, § 1 (P. L. p. 572), requiring competitive bidding by municipalities on entering into contract 'for the furnishing of any material, supplies or labor,' held not to apply to purchase of fire apparatus, and city in making such purchase has some discretion on account of impossibility of making standard specifications for fire apparatus, which does not come within terms "material" or 'supplies.'—*Hahn Motor Truck Corp. v. Atlantic City*, 140 A. 675, 6 N.J.Misc. 234.—Mun Corp 236.

N.J.Super. 1928. Fire apparatus held not "material" or "supplies" which city must purchase pursuant to competitive bidding. Act April 21, 1920, § 1, P.L. p. 572, N.J.S.A. 40:50-1.—*Hahn Motor Truck Corp. v. Atlantic City*, 140 A. 675, 6 N.J.Misc. 234.—Mun Corp 236.

N.J.Super.L. 2000. To be "material," as would support request to withdraw guilty plea, a mistake must relate to penal consequences of a plea; a mistake as to a collateral consequence, while it may have a significant effect upon a defendant, is not material.—*State v. Vieira*, 760 A.2d 840, 334 N.J.Super. 681.—Crim Law 274(4).

N.J.Super.L. 1992. Failure of bidder on township public works project to complete page four of bid form, on which there was provision that bidder forfeits bid bond as liquidated damages in event successful bidder fails to execute contract, was a "material" deviation from bid solicitation, rendering bid "nonresponsive"; with no effective signature on page four, bidder was not bound to its bid and therefore could walk away from obligation to perform work on project, although bidder made belated attempt to cure defect. N.J.S.A. 40A:11-1 et seq.—*Ace-Manzo, Inc. v. Township of Neptune*, 609 A.2d 112, 258 N.J.Super. 129.—Mun Corp 333.

N.J.Tax 1987. Gifts totalling \$381,250, representing 17.7% of decedent's estate, were a "material" part of her estate so that the gifts, having been made within the last three years of her life were presumed to have been made in contemplation of death and were to be included in inheritance tax calculations. N.J.S.A. 54:34-1.—*Maguire Estate v. Director of Div. of Taxation*, 9 N.J.Tax 437.—Tax 879(1).

N.J.Ch. 1932. Term "material," within Conditional Bill of Sales Act, means material injury to structure, and connotes injury to institution of which structure is part (Comp.St.Supp. § 182-93).—*MacLeod v. Walter J. Satterthwait, Inc.*, 157 A. 670, 109 N.J.Eq. 414, affirmed 166 A. 163, 113 N.J.Eq. 238.—Fixt 22.

N.J.Co. 1976. Testimony is "material" for purposes of perjury indictment if it tends to prove one of the central elements of the case; false testimony

as to identity of criminal actors, or the extent of civil damages, or the existence of unlawful interest charges that could excuse repayment of a loan are material.—*State v. Winters*, 355 A.2d 221, 140 N.J.Super. 110.—Perj 11(2).

N.M. 1993. “Material” evidence is evidence that relates to matter in dispute or has reasonable bearing on issue to be decided in given case.—*Matter of Arbitration Between Town of Silver City and Silver City Police Officers Ass’n*, 857 P.2d 28, 115 N.M. 628.—Evid 143.

N.M.App. 2001. An omission or misstatement by a majority shareholder in a close corporation seeking to purchase a minority’s shareholder’s stock is “material,” for purposes of whether the majority shareholder has breached his or her fiduciary duty, if there is a substantial likelihood that, under all the circumstances, the omitted or misstated fact would have assumed actual significance in the deliberations of the reasonable shareholder.—*Walta v. Gallegos Law Firm, P.C.*, 40 P.3d 449, 131 N.M. 544, 2002-NMCA-015, certiorari denied 41 P.3d 345, 131 N.M. 619.—Corp 182.4(5).

N.M.App. 1998. A false statement is “material” if it has a natural tendency to influence or the capability to influence the decision of the decision-making body to which it is addressed.—*State v. Benavidez*, 979 P.2d 234, 127 N.M. 189, 1999-NMCA-053, on rehearing in part 979 P.2d 251, 127 N.M. 206, 1999-NMCA-054, certiorari granted 981 P.2d 1209, 127 N.M. 391, vacated 992 P.2d 274, 128 N.M. 261, 1999-NMSC-041.—Perj 11(2).

N.M.App. 1993. Arrest of witness on charges of conspiracy and tampering with evidence, following her refusal to cooperate in prosecution of defendant for murder, was not “material” evidence whose suppression could require reversal of conviction, considering witness’ admissions at trial that she had been lying about three different versions of events she had provided to police, that she was testifying under immunity agreement, and that authorities had warned her that, if she refused to testify, defendant would probably be acquitted, while she would face prosecution for tampering with evidence and defendant might be awarded custody of her children.—*State v. Chavez*, 867 P.2d 1189, 116 N.M. 807, certiorari denied 867 P.2d 1183, 116 N.M. 801, certiorari denied 114 S.Ct. 2754, 129 L.Ed.2d 870.—Crim Law 1166(10.10).

N.M.App. 1993. Evidence is “material,” for purposes of determining whether *Brady* violation has occurred, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have differed; court evaluates materiality in context of entire record. U.S.C.A. Const.Amend. 6.—*State v. Baca*, 854 P.2d 363, 115 N.M. 536, certiorari denied 854 P.2d 872, 115 N.M. 545.—Crim Law 700(2.1).

N.M.App. 1991. Information defendants sought to discover from State, names of cases filed in any court in New Mexico based on information supplied by confidential informant—who had been listed in criminal information as witness—in which infor-

mant’s identity was disclosed was “material” to establish informant’s motive, for purpose of allowing defendants to discover such information; defendants hoped to impeach informant’s credibility by showing that he supported his habits by informing. SCRA 1986, Rule 5-501, subd. A(3).—*State v. Mathis*, 808 P.2d 972, 111 N.M. 687, reversed 819 P.2d 1302, 112 N.M. 744.—Crim Law 627.6(1).

N.M.App. 1977. Term “material” as used in statute relating to making or permitting false public voucher does not import anything less than a matter which is so substantial and important as to influence a party. 1953 Comp. § 40A-23-3.—*State v. Sierra*, 568 P.2d 206, 90 N.M. 680, certiorari denied 569 P.2d 414, 91 N.M. 4.—False Pret 18.

N.Y. 1996. If defendant has made a general demand that prosecution produce favorable evidence “material” to either guilt or punishment, evidence will be deemed “material” if there is reasonable probability that had it been disclosed to defense result would have been different — i.e., probability sufficient to undermine court’s confidence in outcome of trial. U.S.C.A. Const.Amend. 5.—*People v. Bryce*, 643 N.Y.S.2d 516, 88 N.Y.2d 124, 666 N.E.2d 221, appeal after remand 685 N.Y.S.2d 808, 246 A.D.2d 75, leave to appeal granted 680 N.Y.S.2d 473, 92 N.Y.2d 932, 703 N.E.2d 285, appeal dismissed 684 N.Y.S.2d 482, 92 N.Y.2d 1024, 707 N.E.2d 437, appeal after remand 731 N.Y.S.2d 263, 287 A.D.2d 799.—Crim Law 627.8(3), 700(2.1).

N.Y. 1981. For statement to be “material” so as to form basis of first-degree perjury charge, statement need not prove directly fact in issue, but is sufficient if it is circumstantially material or tends to support and give credit to witness in respect to main fact; thus, statement that reflects on matter under consideration, even if only as to witness’ credibility, is material for purposes of supporting perjury charge. Penal Law § 210.15.—*People v. Davis*, 440 N.Y.S.2d 864, 53 N.Y.2d 164, 423 N.E.2d 341.—Perj 11(2).

N.Y. 1912. Lien Law, Consol.Laws 1909, c. 33, § 5, giving a lien for “materials” furnished a municipal contractor, does not give a lien for rent for a steam shovel leased to a contractor; “material” meaning matter which is intended to be used in the creation of a mechanical structure, or the substance matter of which anything is made.—*Troy Public Works Co. v. City of Yonkers*, 100 N.E. 700, 207 N.Y. 81, 44 L.R.A.N.S. 311.

N.Y.A.D. 1 Dept. 1994. Insured’s misrepresentation on application for life insurance that his driver’s license had not been suspended within two years before date of application was “material” within meaning of statute allowing insurer to avoid liability if misrepresentation induced action by insurer that might otherwise not have been taken. McKinney’s Insurance Law § 3105.—*Mehta v. New York Life Ins. Co.*, 610 N.Y.S.2d 17, 203 A.D.2d 8.—Insurance 3017.

N.Y.A.D. 1 Dept. 1992. Under Uniform Act to Compel the Attendance of Witnesses from Without the State, court ruling on application based on

another state's certificate of materiality must consider any claim of privilege asserted by witness whose attendance is sought in evaluating materiality of evidence sought; "inadmissible evidence" cannot be considered "necessary" or "material" within meaning of the statute. *McKinney's CPL § 640.10.*—Application of Codey, 589 N.Y.S.2d 400, 183 A.D.2d 126, leave to appeal granted in re Codey, 592 N.Y.S.2d 915, 188 A.D.2d 1094, reversed 605 N.Y.S.2d 661, 82 N.Y.2d 521, 626 N.E.2d 636.—Gr Jury 36.3(2).

N.Y.A.D. 1 Dept. 1990. Life policy applicant's failure to disclose his psychological condition (dysthmic and compulsive personality disorders) and his treatment by psychiatrist on 79 occasions constituted "material" misrepresentation as a matter of law sufficient to permit insurer to avoid liability. *McKinney's Insurance Law § 3105(b).*—*Aguilar v. U.S. Life Ins. Co. in the City of New York*, 556 N.Y.S.2d 584, 162 A.D.2d 209.—Insurance 3003(11).

N.Y.A.D. 1 Dept. 1976. For purpose of determining whether misrepresentation on life insurance application is "material," test is whether failure to furnish true answer defeats or seriously interferes with insurer's exercise of its right to accept or reject the application and major question is whether insurer was induced to accept application which it might otherwise have refused. *Insurance Law § 149*, subds. 2, 4.—*Process Plants Corp. v. Beneficial National Life Ins. Co.*, 385 N.Y.S.2d 308, 53 A.D.2d 214, affirmed 397 N.Y.S.2d 1007, 42 N.Y.2d 928, 366 N.E.2d 1361.—Insurance 3001.

N.Y.A.D. 1 Dept. 1915. Lumber furnished a contractor with the city of New York for part of a rapid transit railroad, and actually used in building derricks, temporary trestle, fences, bracing, sheeting or sheathing, street flooring or decking, or supports for holding up a public street, is within the mechanic's lien statute; but lumber used for building offices and other temporary buildings, for constructing concrete molds, repairing cars, or otherwise used in the plant of the contractor, is not within the statute, for the word "material" means matter which is intended to be used in the creation of a mechanical structure or the substance matter of which anything is made.—*Church E. Gates & Co. v. Jno. F. Stevens Const. Co.*, 154 N.Y.S. 605, 169 A.D. 221, affirmed 115 N.E. 22, 220 N.Y. 38.

N.Y.A.D. 2 Dept. 2002. Generally, the term "material" as used in a Miller Act bond encompasses items which are reasonably expected to be consumed or substantially consumed in the performance of work on a federal project, but the term does not include capital equipment which can be removed from the work site and used on subsequent projects; in distinguishing material from capital equipment, the focus is on the degree of expected consumption of the items on the particular job for which they were furnished. *Miller Act, § 2*, as amended, 40 U.S.C.A. § 270b.—*Harsco Corp. v. Gripon Const. Corp.*, 752 N.Y.S.2d 59, 301 A.D.2d 90.—U S 67(6).

N.Y.A.D. 2 Dept. 2001. A misrepresentation is "material," so as to warrant rescission of an insurance policy, if the insurer would not have issued the policy had it known the facts misrepresented. *McKinney's Insurance Law § 3105(b).*—*Zilkha v. Mutual Life Ins. Co. of New York*, 732 N.Y.S.2d 51, 287 A.D.2d 713.—Insurance 2958.

N.Y.A.D. 2 Dept. 1994. Modification of building loan agreement is "material" requiring lien law notice, if it: alters rights and liabilities otherwise existing between parties to agreement, or enlarges, restricts or impairs rights of any third-party beneficiary. *McKinney's Lien Law § 22.*—*Howard Sav. Bank v. Lefcon Partnership*, 618 N.Y.S.2d 910, 209 A.D.2d 473, leave to appeal dismissed 634 N.Y.S.2d 445, 86 N.Y.2d 837, 658 N.E.2d 223.—Mtg 167.

N.Y.A.D. 2 Dept. 1978. Where contract between lender and builder-owner-borrower stated that latter was to provide surety payment bonds "covering * * * subcontractors," and builder-owner-borrower gave noncomplying bond specifically stating that it was for benefit of lender only and merely guaranteed that builder-owner-borrower would "faithfully account" for funds disbursed pursuant to building loan, and where such noncomplying bond was accepted by lender, there was "modification of contract" and, insofar as it enlarged, restricted or impaired rights of any third-party beneficiary, there was "material" modification required to be filed pursuant to Lien Law. *Lien Law § 22.*—*HNC Realty Co. v. Bay View Towers Apartments, Inc.*, 409 N.Y.S.2d 774, 64 A.D.2d 417.—Contracts 243; Mech Liens 313.

N.Y.A.D. 2 Dept. 1978. Test whether modification of contract was "material" so as to require that it be filed pursuant to Lien Law was whether it altered rights and liabilities otherwise existing between parties to agreement or enlarged, restricted or impaired rights of any third-party beneficiary. *Lien Law § 22.*—*HNC Realty Co. v. Bay View Towers Apartments, Inc.*, 409 N.Y.S.2d 774, 64 A.D.2d 417.—Mech Liens 313.

N.Y.A.D. 2 Dept. 1908. In Code Civ.Proc. § 870 et seq., and general rule of practice 82, requiring, for the examination of an adverse party before trial, a showing by affidavit that the testimony is material and necessary, the words "material" and "necessary" are not used synonymously, even if the word "necessary" does not mean indispensable to the making of an issue.—*Koplin v. Hoe*, 108 N.Y.S. 602, 123 A.D. 827.—Discov 55.

N.Y.A.D. 3 Dept. 1995. Optical records of motorist who had struck pedestrian were "material" and "necessary," and could be discovered in connection with action brought by pedestrian against motorist, where motorist at examination before trial indicated that she had not been prescribed corrective lenses prior to accident and pedestrian contended that requested documents would show to the contrary. *McKinney's CPLR 3101(a).*—*Robinson v. Meca*, 632 N.Y.S.2d 728, 214 A.D.2d 246.—Pretrial Proc 382.

N.Y.A.D. 3 Dept. 1995. Information sought in good faith for possible use as evidence-in-chief, in

rebuttal, or for cross-examination should be considered "material" in prosecution or defense of case and subject to discovery. McKinney's CPLR 3101(a).—*Robinson v. Meca*, 632 N.Y.S.2d 728, 214 A.D.2d 246.—*Pretrial Proc* 31.

N.Y.A.D. 3 Dept. 1992. Defendant's misstatements indicating that he was attorney in fact for client, when in fact client had revoked power of attorney, and regarding amount of consideration received in transfer gain tax affidavit were "material," as required for perjury conviction; evidence indicated that defendant was not attorney in fact at time he executed affidavit and that defendant effected transfer as means of payment for services rendered to client and for which he had not been paid, thus indicating that transfer was for consideration in excess of \$1 recited in affidavit. McKinney's Penal Law § 210.10; McKinney's Tax Law § 1440 et seq.—*People v. De Leo*, 585 N.Y.S.2d 629, 185 A.D.2d 374, appeal denied 591 N.Y.S.2d 143, 80 N.Y.2d 974, 605 N.E.2d 879.—*Perj* 11(3).

N.Y.A.D. 4 Dept. 2000. In order to be "material," for purposes of a prosecution for perjury in the first degree, the false statement must merely reflect on the matter under consideration, even if it reflects only on the witness's credibility. McKinney's Penal Law § 210.15.—*People v. Evans*, 704 N.Y.S.2d 418, 269 A.D.2d 797, leave to appeal denied 713 N.Y.S.2d 141, 95 N.Y.2d 834, 735 N.E.2d 421.—*Perj* 11(9).

N.Y.A.D. 4 Dept. 2000. False testimony is "material," for purposes of a prosecution for perjury in the first degree, if it has the natural effect or tendency to impede, influence or dissuade the grand jury from pursuing its investigation. McKinney's Penal Law § 210.15.—*People v. Evans*, 704 N.Y.S.2d 418, 269 A.D.2d 797, leave to appeal denied 713 N.Y.S.2d 141, 95 N.Y.2d 834, 735 N.E.2d 421.—*Perj* 11(7).

N.Y.Sup. 1996. *Brady* requires disclosure of only relevant and material exculpatory evidence and, in deciding whether favorable information is "material," information must be evaluated in context of defendant's request; if defendant has made only general request for favorable information, he must show that undisclosed exculpatory material created reasonable doubt that did not otherwise exist, but if defendant has made specific request narrowly tailored to identify relevant information he seeks, he need only show that there is reasonable possibility that failure to disclose information contributed to verdict. U.S.C.A. Const.Amend. 14.—*People v. Shakur*, 648 N.Y.S.2d 200, 169 Misc.2d 961.—*Crim Law* 700(2.1).

N.Y.Sup. 1977. For purpose of prosecution for perjury committed before grand jury, materiality of questions asked defendant by grand jury is not determined solely by effect question and answer may have in determining guilt or innocence, for question may be "material" to a subject under investigation even if it relates to some collateral or circumstantial element of the case.—*People v. Lev*, 398 N.Y.S.2d 593, 91 Misc.2d 241.—*Perj* 11(7).

N.Y.Sup. 1965. "Material," with reference to issues on summary judgment, means substantial, of consequence, important, going to essence or merits, or relating to matter of substance rather than form.—*Wanger v. Zeh*, 256 N.Y.S.2d 227, 45 Misc.2d 93.—*Judgm* 181(2).

N.Y.Sup. 1963. Questions pertaining to rents, hotel income, cost of construction and contents of general contractor's contract and questions relating to lease, blanket mortgage and fire insurance were "material" in hearing on protest of assessment within statute. Real Property Tax Law, § 512, subds. 2, 3.—*Hilton Inns, Inc. v. Board of Assessors, Village of Tarrytown*, 242 N.Y.S.2d 433, 39 Misc.2d 792.—*Tax* 485(2).

N.Y.Sup. 1955. Evidence which has an effective influence or bearing on question in issue is "material".—*Barr v. Dolphin Holding Corp.*, 141 N.Y.S.2d 906.—*Evid* 143.

N.Y.Sup. 1941. The word "material" in statute providing that comptroller may require bond guaranteeing prompt payment of money due to persons supplying contractor, or subcontractor with labor and material employed and used in carrying out contract with state for public improvement, was intended to include only material for which mechanics' lien can be filed. State Finance Law, § 137.—*Hub Oil Co. v. Jodomar, Inc.*, 27 N.Y.S.2d 370, 176 Misc. 320.—*States* 101.

N.Y.Sup. 1925. "Material," within Lien Law, § 5, permitting liens for labor or material furnished for municipal improvement, is some physical substance, which goes into or forms a part of the work under construction.—*Travelers' Ins. Co. v. Village of Ilion*, 213 N.Y.S. 206, 126 Misc. 275.—*Mun Corp* 373(2).

N.Y.Gen.Sess. 1917. In Penal Law, § 1620, denouncing as perjury false testimony of a witness as to any "material matter," the word "material" includes testimony elicited concerning a collateral matter, providing such testimony is material, as tending either to prove or to disprove a fact bearing on any matter at issue.—*People v. Brill*, 165 N.Y.S. 65, 100 Misc. 92, 35 N.Y.Crim.R. 515.—*Perj* 11(8).

N.Y.Sp.Sess. 1941. Burlap bags and bagging kept by defendant in premises in city of New York were "material" within provision of Administrative Code prohibiting storage, without permit, of combustible fiber or material in excess of one ton on premises within the city, as against contention that under doctrine of "ejusdem generis" the words "or material" in the Code should be construed in a restricted sense as referring to such other matters as are kindred to "fibre". Administrative Code, § C19-149.0, subds. a, b, and § C19-151.0.—*People v. Freedman*, 31 N.Y.S.2d 82.—*Mun Corp* 631(1).

N.Y.Fam.Ct. 1983. Factors which are "material" and "necessary" to determination of fair and reasonable sum for support of child born out-of-wedlock are those outlined in provision which applies to support for children born in wedlock, as factors are applicable in all Uniform Support of

Dependent Laws proceedings. McKinney's Family Court Act §§ 413, 545; McKinney's DRL § 32, subd. 3; McKinney's CPLR 3101(a).—E.M. v. G.S., 470 N.Y.S.2d 77, 122 Misc.2d 177.—Child 67.

N.C. 2002. Favorable evidence is "material," within the meaning of *Brady*, if there is a reasonable probability that its disclosure to the defense would result in a different outcome in the jury's deliberation.—*State v. Canady*, 559 S.E.2d 762, 355 N.C. 242.—Crim Law 700(2.1).

N.C. 1998. Exculpatory evidence is considered "material," for purposes of *Brady* requirement that it be turned over to defendant, only if there is a reasonable probability of a different result had the evidence been disclosed to the defense.—*State v. Call*, 508 S.E.2d 496, 349 N.C. 382, appeal after remand 545 S.E.2d 190, 353 N.C. 400, certiorari denied 122 S.Ct. 628, 534 U.S. 1046, 151 L.Ed.2d 548.—Crim Law 700(2.1).

N.C. 1997. Favorable evidence is "material" within meaning of *Brady* if there is reasonable probability that its disclosure to defense would result in different outcome in jury's deliberation. U.S.C.A. Const.Amend. 5.—*State v. Strickland*, 488 S.E.2d 194, 346 N.C. 443, certiorari denied 118 S.Ct. 858, 522 U.S. 1078, 139 L.Ed.2d 757.—Crim Law 700(2.1).

N.C. 1997. Defendant's oral statement that gun went off accidentally was not "material" within meaning of *Brady*, even if trial court's refusal to order prosecutor to divulge name of person to whom defendant stated that gun had gone off accidentally prevented defendant from presenting favorable evidence at trial in capital murder prosecution, where defendant made full statement in which he repeatedly said that he meant to kill victim, where state's evidence tended to show that defendant intentionally removed gun from cabinet and pointed it at victim's back at close range, and where defendant admitted to police that he knew gun was loaded and that he slid pump mechanism on gun, causing a shell to enter firing chamber. U.S.C.A. Const.Amend. 5.—*State v. Strickland*, 488 S.E.2d 194, 346 N.C. 443, certiorari denied 118 S.Ct. 858, 522 U.S. 1078, 139 L.Ed.2d 757.—Crim Law 700(3).

N.C. 1996. Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, and evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 5, 14.—*State v. Heatwole*, 473 S.E.2d 310, 344 N.C. 1, certiorari denied 117 S.Ct. 1259, 520 U.S. 1122, 137 L.Ed.2d 339.—Const Law 268(5).

N.C. 1996. For purposes of alleged *Brady* violation, evidence is "material" only if there is reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in out-

come.—*State v. Kilpatrick*, 471 S.E.2d 624, 343 N.C. 466.—Crim Law 700(2.1).

N.C. 1995. Defense witness' prior inconsistent statements were admissible to impeach testimony which was crucial to defendant's theory of the case that someone other than he had hired hit man to kill victim; such testimony was "material" and, therefore, subject to impeachment through extrinsic evidence. U.S.C.A. Const.Amend. 6.—*State v. Larimore*, 456 S.E.2d 789, 340 N.C. 119.—Witn 383.

N.C. 1992. Witness' perjured statement that he was graduate of accredited medical school was not "material" in trial for first-degree murder, and thus did not entitle defendant to relief from conviction, where witness was not tendered as medical expert nor did he render any medical opinions based upon his observations of defendant, but rather, witness merely testified to admissions made by defendant upon his admittance to hospital, and where there was substantial evidence in addition to medical records which tended to show that defendant acted with premeditation and deliberation. Rules of Evid., Rule 801(d).—*State v. Jolly*, 420 S.E.2d 661, 332 N.C. 351.—Crim Law 706(2).

N.C. 1984. For purposes of a motion for summary judgment, issues which can be proven by substantial evidence are "genuine," and facts are "material" if they constitute or establish any material element of a claim or defense. Rules Civ.Proc., Rule 56(c), G.S. § 1A-1.—*Grad v. Kaasa*, 321 S.E.2d 888, 312 N.C. 310.—Judgm 181(2).

N.C. 1980. An issue is "material," within context of rule governing granting of motions for summary judgment, if, as alleged, facts would constitute a legal defense or would affect result of the action or if its resolution would prevent party against whom it is resolved from prevailing in the action. Rules of Civil Procedure, Rule 56(c), G.S. § 1A-1.—*City of Thomasville v. Lease-A-Fex, Inc.*, 268 S.E.2d 190, 300 N.C. 651.—Judgm 181(2).

N.C. 1976. Motion for summary judgment shall be allowed only when evidence reveals no genuine issue as to any material fact and when moving party is entitled to a judgment as matter of law; issue is "material" if the facts alleged would constitute a legal defense or would affect result of the action.—*North Carolina Nat. Bank v. Gillespie*, 230 S.E.2d 375, 291 N.C. 303.—Judgm 181(2), 181(3).

N.C. 1972. Within rule that motion for summary judgment shall be allowed if evidence reveals no genuine issue as to any material fact, issue is "material" if facts alleged would constitute a legal defense or would affect result of action or if its resolution would prevent party against whom it is resolved from prevailing in the action. Rules of Civil Procedure, rule 56, G.S. § 1A-1.—*Koontz v. City of Winston-Salem*, 186 S.E.2d 897, 280 N.C. 513.—Judgm 181(2).

N.C. 1955. A false representation is "material" when it deceives a person and induces him to act.—*Keith v. Wilder*, 86 S.E.2d 444, 241 N.C. 672.—Fraud 18.

N.C. 1937. For a fact untruly asserted or wrongfully suppressed in an application for insurance to be "material" under statute so as to preclude recovery on policy, it must be such that knowledge or ignorance of it, would naturally influence judgment of underwriter in making contract, estimating character of risk, or fixing premium rate (C.S. §§ 6287-6289).—*Wells v. Jefferson Standard Life Ins. Co.*, 190 S.E. 744, 211 N.C. 427.—Insurance 2958.

N.C. 1898. A dynamo used in an electric light and power plant of a company is not "material," within the meaning of the Code, § 1255, providing that mortgages upon the property of a corporation shall not exempt its property from an execution for material furnished the corporation.—*General Electric Co. v. Morganton Electric Light & Power Co.*, 30 S.E. 314, 122 N.C. 599.—Corp 480.

N.C.App. 2003. Evidence is "material" for *Brady* purposes if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*State v. Lynn*, 578 S.E.2d 628.—Crim Law 700(2.1).

N.C.App. 2003. Evidence is "material," for purposes of determining whether sexual abuse defendant is constitutionally entitled to disclosure of sealed governmental records, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; "reasonable probability" is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amends. 5, 14.—*State v. Henderson*, 574 S.E.2d 700, appeal dismissed, review denied 357 N.C. 64.—Crim Law 627.6(6).

N.C.App. 2002. Issue is "material," for purposes of summary judgment, if facts alleged would constitute legal defense, or would affect result of action, or if its resolution would prevent party against whom it is resolved from prevailing in action. Rules Civ.Proc., Rule 56(c), West's N.C.G.S.A. § 1A-1.—*Thompson v. First Citizens Bank & Trust Co.*, 567 S.E.2d 184, 151 N.C.App. 704.—Judgm 181(2).

N.C.App. 2002. In the context of the state's duty to disclose evidence to defense, evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to defense, the result of proceeding would have been different.—*State v. Holadia*, 561 S.E.2d 514, 149 N.C.App. 248, writ denied, review denied 562 S.E.2d 432.—Crim Law 700(2.1).

N.C.App. 2001. A representation in an application for an insurance policy is "material" if the knowledge or ignorance of it would naturally influence the judgment of the insurer in making the contract, in estimating the degree and character of the risk, in fixing the rate of the premium. G.S. §§ 58-3-10, 58-44-15.—*Crawford v. Commercial Union Midwest Ins. Co.*, 556 S.E.2d 30, 147 N.C.App. 455, certiorari denied 568 S.E.2d 190, 356

N.C. 160, affirmed 572 S.E.2d 781, 356 N.C. 609.—Insurance 2958.

N.C.App. 2001. Misrepresentations on an insurance application are "material" if the knowledge or ignorance of it would naturally influence the judgment of the insurer in making the contract and accepting the risk. G.S. § 58-44-15.—*Bell v. Nationwide Ins. Co.*, 554 S.E.2d 399, 146 N.C.App. 725.—Insurance 2958.

N.C.App. 2000. Evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*State v. McGill*, 539 S.E.2d 351, 141 N.C.App. 98.—Crim Law 700(2.1).

N.C.App. 2000. Reasonable probability that had defendant had sealed social services records in sexual abuse trial, defendant would not have been convicted existed, and thus records were both "favorable" and "material," where alleged sexual abuse victim and brother were only eyewitnesses to alleged abuse, medical exam performed almost four months after alleged assault, was normal, and mother testified she did not notice any discomfort in alleged victim, nor any blood or feces in underwear, alleged victim may have witnessed uncle and another man having sex and been exposed to pornographic videos, records indicated that alleged victim and brother's made prior unsubstantiated claims of abuse, and that brother stated that false allegation was at prompting of grandmother, who was seeking custody of children.—*State v. McGill*, 539 S.E.2d 351, 141 N.C.App. 98.—Crim Law 700(3).

N.C.App. 2000. Evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*State v. Thompson*, 533 S.E.2d 834, 139 N.C.App. 299.—Crim Law 700(2.1).

N.C.App. 2000. Evidence favorable to defendant is "material," and thus is required to be disclosed by state, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*State v. Harshaw*, 532 S.E.2d 224, 138 N.C.App. 657, review denied 544 S.E.2d 793, 352 N.C. 594.—Crim Law 700(2.1).

N.C.App. 1999. For purposes of summary judgment, an issue is only "material" if the facts alleged would constitute a legal defense, or would affect the result of the action, or if its resolution would prevent the party against whom it is resolved from prevailing in the action. Rules Civ.Proc., Rule 56(c), G.S. § 1A-1.—*Crowder Const. Co. v. Kiser*, 517 S.E.2d 178, 134 N.C.App. 190, review denied 541 S.E.2d 142, 351 N.C. 101.—Judgm 181(2).

N.C.App. 1998. Under *Brady* rule requiring disclosure of evidence material either to guilt or to punishment of accused, evidence is "material" only

when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*State v. Small*, 508 S.E.2d 799, 131 N.C.App. 488.—*Crim Law* 700(2.1).

N.C.App. 1997. Representation in application for insurance policy is "material" if knowledge or ignorance of it would naturally influence judgment of insurer in making contract, or in estimating degree and character of risk, or in fixing rate of premium.—*Metropolitan Property and Cas. Ins. Co. v. Dillard*, 487 S.E.2d 157, 126 N.C.App. 795.—*Insurance* 2958.

N.C.App. 1993. By using word "material," considered in context of definitions of "improve" and "improvement," in lien statute, legislature contemplated something that is capable of becoming part of real property and therefore, rental equipment is not "material" furnished for improvement of real property under lien statute. G.S. §§ 44A-7, 44A-18(3).—*Southeastern Steel Erectors, Inc. v. Inco, Inc.*, 424 S.E.2d 433, 108 N.C.App. 429.—*Mech Liens* 47.

N.C.App. 1992. Allegedly exculpatory testimony that, on night of charged armed robbery, witness noticed victim's car and pickup truck with dew on it in parking lot, which allegedly was inconsistent with other evidence produced by state in support of defense theory that defendants were not in state at time of incident, was not "material" to question of guilt, and thus, prosecution's failure to disclose such evidence until fourth trial was not due process violation. U.S.C.A. Const.Amends. 5, 14.—*State v. Pakulski*, 417 S.E.2d 515, 106 N.C.App. 444, review denied 424 S.E.2d 415, 332 N.C. 670.—*Const Law* 268(5); *Crim Law* 700(3).

N.C.App. 1990. Issue is "genuine," for purposes of summary judgment rule, if it can be maintained by substantial evidence, and fact is "material" if it would establish any material element of claim or defense. Rules Civ.Proc., Rule 56(c), G.S. § 1A-1.—*Martin v. Ray Lackey Enterprises, Inc.*, 396 S.E.2d 327, 100 N.C.App. 349.—*Judgm* 181(2).

N.C.App. 1988. Conflict in evidence, on whether defendant executed written confession following police officer's statement that bond would not be reduced until defendant confessed, was not "material" requiring trial court to render findings of fact to support its denial of suppression motion, as bond reduction was a collateral promise, did not relate to defendant's escape from charges against him, and thus did not affect admissibility of his statements. U.S.C.A. Const.Amend. 5.—*State v. Marshall*, 374 S.E.2d 874, 92 N.C.App. 398, certiorari denied 400 S.E.2d 459, 328 N.C. 273.—*Crim Law* 532(0.5).

N.C.App. 1988. "Material" issue of fact exists, precluding entry of summary judgment, if disputed facts would constitute legal defense or would affect result of action.—*Barber v. Woodmen of the World Life Ins. Soc.*, 364 S.E.2d 715, 88 N.C.App. 666.—*Judgm* 181(5.1), 181(6).

N.C.App. 1987. For purposes of determining whether summary judgment is appropriate, fact is "material" if it constitutes legal defense, such as bar of applicable statute of limitations. Rules Civ. Proc., Rule 56(c), G.S. § 1A-1.—*Boudreau v. Baughman*, 356 S.E.2d 907, 86 N.C.App. 165, review allowed 361 S.E.2d 71, 320 N.C. 790, affirmed in part, modified in part and reversed in part 368 S.E.2d 849, 322 N.C. 331.—*Judgm* 181(6), 181(7).

N.C.App. 1984. Misrepresentation made by insured during loss investigation by insurer is "material" only when misrepresentation prejudices insurer. G.S. § 58-176(c).—*Bryant v. Nationwide Mut. Fire Ins. Co.*, 313 S.E.2d 803, 67 N.C.App. 616, review allowed 319 S.E.2d 267, 311 N.C. 399, affirmed in part, reversed in part 329 S.E.2d 333, 313 N.C. 362.—*Insurance* 3185, 3186.

N.C.App. 1984. Misrepresentations made by insureds shortly after fire which destroyed their house, relating to their financial condition and marital status, were not "material" within meaning of statute providing for avoidance of insurance contract in event of material misrepresentation, given that the misstatements did not prevent prompt investigation of fire by law enforcement officials and insurer's agents, nor did they concern amount of loss or origin of the fire and, thus, insurer was not prejudiced thereby. G.S. § 58-176(c).—*Bryant v. Nationwide Mut. Fire Ins. Co.*, 313 S.E.2d 803, 67 N.C.App. 616, review allowed 319 S.E.2d 267, 311 N.C. 399, affirmed in part, reversed in part 329 S.E.2d 333, 313 N.C. 362.—*Insurance* 3185.

N.C.App. 1983. Whether representations in application for insurance are "material" depends upon circumstances in each case and is usually, though not always, a question of fact for jury.—*Michael v. St. Paul Fire and Marine Ins. Co.*, 308 S.E.2d 727, 65 N.C.App. 50.—*Insurance* 2985.

N.C.App. 1982. Issue is "material" for purpose of summary judgment motion, if alleged fact constitutes legal defense or would affect result of action, or if its resolution would prevent party against whom it is resolved from prevailing in action. Rules Civ.Proc., Rules 56, 56(c), G.S. § 1A-1.—*Hillman v. U.S. Liability Ins. Co.*, 296 S.E.2d 302, 59 N.C.App. 145, review denied 299 S.E.2d 221, 307 N.C. 468.—*Judgm* 181(2).

N.C.App. 1982. Issue is "material" within purview of Rule of Civil Procedure governing summary judgment if facts as alleged would constitute legal defense, would affect result of action or if its resolution would prevent party against whom it is resolved from prevailing in action. Rules Civ.Proc., Rule 56, G.S. § 1A-1.—*Rathburn v. Hawkins*, 286 S.E.2d 827, 56 N.C.App. 82.—*Judgm* 181(2).

N.C.App. 1980. Representation in life insurance application is deemed "material" if knowledge or ignorance of it would naturally influence judgment of insurer in making contract and accepting the risk.—*Willets v. Integon Life Ins. Corp.*, 263 S.E.2d 300, 45 N.C.App. 424, review denied 270 S.E.2d 116, 300 N.C. 562.—*Insurance* 3001.

N.C.App. 1978. Issue of fact is "material," for purposes of summary judgment motion, if its resolution would prevent party against whom it is resolved from prevailing in action or if fact or facts would constitute legal defense or affect result of the action. Rules of Civil Procedure, rule 56(e), G.S. § 1A-1.—*Miller v. Lemon Tree Inn of Wilmington, Inc.*, 249 S.E.2d 836, 39 N.C.App. 133.—Judgm 181(2).

N.C.App. 1978. Issue is "material" so as to preclude summary judgment only if its resolution would prevent the party against whom it is resolved from prevailing or the fact alleged would affect the result of the action or constitute a legal defense, while issue is "genuine" if it is supported by substantial evidence. Rules of Civil Procedure, rule 56, G.S. § 1A-1.—*Gladstein v. South Square Associates*, 249 S.E.2d 827, 39 N.C.App. 171, review denied 254 S.E.2d 178, 296 N.C. 736.—Judgm 181(2).

N.C.App. 1975. In determining what constitutes a genuine issue as to any material fact for purposes of summary judgment, an issue is "material" if the facts alleged are such as to constitute a legal defense or are of such nature as to affect the result of the action. Rules of Civil Procedure, rules 56, 56(c), G.S. § 1A-1.—*Austin v. Wilder*, 215 S.E.2d 794, 26 N.C.App. 229.—Judgm 185(6).

N.D. 2003. If the law is such that resolution of any factual disputes will not alter the result, the disputed facts are not "material," and summary judgment is appropriate.—*American Nat. Fire Ins. Co. v. Hughes*, 658 N.W.2d 330, 2003 ND 43.—Judgm 181(2).

N.D. 2001. If the Workers Compensation Bureau is seeking forfeiture of future benefits, a false claim or false statement is sufficiently "material" if it is a statement which could have misled the Bureau or medical experts in a determination of the claim. NDCC 65-05-33.—*Aalund v. North Dakota Workers Compensation Bureau*, 622 N.W.2d 210, 2001 ND 32.—Work Comp 771.

N.D. 1998. To modify spousal support, a material change in circumstances must be shown; slight or moderate changes in the parties' relative incomes are not necessarily "material," but rather, material change means something which substantially affects the parties' financial abilities or needs, and the reasons for changes in income must be examined as well as the extent the changes were contemplated by the parties at the time of the initial decree or a subsequent modification.—*Schmalle v. Schmalle*, 586 N.W.2d 677, 1998 ND 201.—Divorce 245(2).

N.D. 1997. If Workers Compensation Bureau is seeking reimbursement for benefits paid, "materiality" requires Bureau to prove that claimant's false claim or false statement caused benefits to be paid in error, but if Bureau is seeking forfeiture of future benefits, false claim or false statement is sufficiently "material" if it is statement which could have misled Bureau or medical experts in determination of claim. NDCC 65-05-33 (1996).—*Hausauer v. North Dakota Workers Compensation Bu-*

reau, 572 N.W.2d 426, 1997 ND 243, rehearing denied.—Work Comp 771.

N.D. 1997. Workers' compensation claimant's willful false statement was sufficiently "material" to support forfeiture of his benefits where there was undisputed record of claimant's prior back problems, and claimant's failure to report prior back injuries and treatments could have misled Workers Compensation Bureau in its determination of his claim for future benefits for back injury. NDCC 65-05-33 (1996).—*Hausauer v. North Dakota Workers Compensation Bureau*, 572 N.W.2d 426, 1997 ND 243, rehearing denied.—Work Comp 1598.

N.D. 1979. Term "material" as used in statute permitting additional evidence to be introduced in a case in which an appeal from a determination of an administrative agency is pending, requires more than that such additional evidence relate in some manner to particular controversy or question; rather, such evidence should have a tendency to significantly support position of party advancing its admission. NDCC 28-32-18.—*Insurance Services Office v. Knutson*, 283 N.W.2d 395.—Insurance 1546.

N.D. 1977. Where a false statement or failed disclosure in an application for admission to bar has effect of inhibiting efforts of bar to determine an applicant's fitness to practice law, it is "material" within rule that "A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar." Code of Professional Responsibility, DR1-101(A).—*Matter of Howe*, 257 N.W.2d 420.—Atty & C 40.

Ohio 2002. Evidence suppressed by the prosecution is "material" within the meaning of *Brady* only if there exists a reasonable probability that the result of the trial would have been different had the evidence been disclosed to the defense.—*State v. LaMar*, 767 N.E.2d 166, 95 Ohio St.3d 181, 2002-Ohio-2128, reconsideration denied 770 N.E.2d 1050, 96 Ohio St.3d 1441, 2002-Ohio-3344, certiorari denied *Lamar v. Ohio*, 123 S.Ct. 632, 154 L.Ed.2d 537.—Crim Law 700(2.1).

Ohio 1998. Evidence relevant to selective-prosecution claim is neither "favorable" to defendant nor "material" to guilt or punishment; thus, it is not discoverable under *Brady* rule or state law. Rules Crim.Proc., Rule 16(B)(1)(f).—*State v. Keene*, 693 N.E.2d 246, 81 Ohio St.3d 646, 1998-Ohio-342, motion stricken 694 N.E.2d 1373, 82 Ohio St.3d 1437, stay granted 695 N.E.2d 267, 82 Ohio St.3d 1445, certiorari denied 119 S.Ct. 350, 525 U.S. 936, 142 L.Ed.2d 288, denial of post-conviction relief affirmed 1999 WL 55711, dismissed, appeal not allowed 710 N.E.2d 716, 85 Ohio St.3d 1496.—Crim Law 627.6(1), 700(3).

Ohio 1998. Terms "favorable" and "material" as used in state rule requiring prosecutor to turn over certain evidence to defendant have same meaning as they do in *Brady* and its progeny. Rules Crim.Proc., Rule 16(B)(1)(f).—*State v. Keene*, 693 N.E.2d 246, 81 Ohio St.3d 646,

1998-Ohio-342, motion stricken 694 N.E.2d 1373, 82 Ohio St.3d 1437, stay granted 695 N.E.2d 267, 82 Ohio St.3d 1445, certiorari denied 119 S.Ct. 350, 525 U.S. 936, 142 L.Ed.2d 288, denial of post-conviction relief affirmed 1999 WL 55711, dismissed, appeal not allowed 710 N.E.2d 716, 85 Ohio St.3d 1496.—Crim Law 627.6(1).

Ohio 1998. Evidence is "favorable" to defendant and "material" to guilt or punishment, and thus is discoverable under *Brady* rule, only if it is material to mitigation, exculpation, or impeachment.—State v. Keene, 693 N.E.2d 246, 81 Ohio St.3d 646, 1998-Ohio-342, motion stricken 694 N.E.2d 1373, 82 Ohio St.3d 1437, stay granted 695 N.E.2d 267, 82 Ohio St.3d 1445, certiorari denied 119 S.Ct. 350, 525 U.S. 936, 142 L.Ed.2d 288, denial of post-conviction relief affirmed 1999 WL 55711, dismissed, appeal not allowed 710 N.E.2d 716, 85 Ohio St.3d 1496.—Crim Law 700(2.1).

Ohio 1994. Mistake is "material," so as to possibly provide basis for rescinding contract under doctrine of mutual mistake, if it is mistake as to basic assumption on which contract was based that has material effect on agreed exchange of performances. Restatement (Second) of Contracts § 152.—Reiley v. Richards, 632 N.E.2d 507, 69 Ohio St.3d 352, 1994-Ohio-528, reconsideration denied 634 N.E.2d 1029, 69 Ohio St.3d 1483.—Contracts 93(5).

Ohio 1926. In general, "material" imports substance of which anything is made; matter intended to be used in creation of mechanical structure. Term material is commonly used to designate article employed in erection and completion of buildings, but does not include tools, machinery, or appliances used to facilitate work, which are not incorporated into the structure, and does not include machinery used for manufacture of materials themselves.—Royal Indem. Co. v. Day & Maddock Co., 150 N.E. 426, 24 Ohio Law Rep. 182, 114 Ohio St. 58, 4 Ohio Law Abs. 89, 44 A.L.R. 374.

Ohio App. 1 Dist. 2000. In determining whether the state improperly suppressed evidence favorable to the defendant, in violation of due process, the evidence is considered to be "material" only if there is a "reasonable probability" that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, meaning a probability sufficient to undermine confidence in the outcome of the trial. U.S.C.A. Const.Amend. 14; Rules Crim.Proc., Rule 16.—State v. Knight, 749 N.E.2d 761, 140 Ohio App.3d 797, dismissed, appeal not allowed 741 N.E.2d 143, 91 Ohio St.3d 1416.—Const Law 268(5).

Ohio App. 2 Dist. 2000. Information which majority partner interests did not disclose to minority partner about lucrative transaction, which information included fact that two other partners in realty partnership were talking to a bank and that bank was willing to loan partnership the money based on only a 25% personal guarantee, was "material," that is, under the circumstances, the facts were likely to have affected a reasonable person's conduct concerning transaction, even though informa-

tion did not have to be material for its nondisclosure to be a breach of fiduciary duty.—Schafer v. RMS Realty, 741 N.E.2d 155, 138 Ohio App.3d 244, appeal not allowed 738 N.E.2d 383, 90 Ohio St.3d 1472.—Partners 79.

Ohio App. 2 Dist. 1997. Evidence is "material" under *Brady* only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different, and "reasonable probability" is probability sufficient to undermine confidence in outcome. U.S.C.A. Const. Amend. 14.—State v. Aldridge, 697 N.E.2d 228, 120 Ohio App.3d 122.—Crim Law 700(2.1).

Ohio App. 2 Dist. 1990. Witness' testimony during grand jury proceeding that, early in same proceeding, she had made false statement was "material" falsification as necessary to convict for perjury; false testimony could have had critical bearing on outcome of grand jury proceeding as testimony went directly to guilt or innocence of murder suspect. R.C. § 2921.11.—State v. Childress, 585 N.E.2d 567, 66 Ohio App.3d 491.—Perj 11(7).

Ohio App. 3 Dist. 1995. For purposes of requirement that prosecution disclose material evidence favorable to defendant, evidence is "material" if there is a reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in outcome.—State v. Hodges, 669 N.E.2d 256, 107 Ohio App.3d 578, stay granted 659 N.E.2d 795, 74 Ohio St.3d 1503, dismissed, appeal not allowed 663 N.E.2d 330, 75 Ohio St.3d 1449, reconsideration denied 664 N.E.2d 1294, 75 Ohio St.3d 1498.—Crim Law 700(2.1).

Ohio App. 4 Dist. 1992. Evidence is "material," for purposes of due process requirement that material exculpatory evidence be preserved by police, only if there is reasonable probability that, had evidence been disclosed to defense result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 14.—State v. Caldwell, 607 N.E.2d 1096, 79 Ohio App.3d 667, jurisdictional motion overruled 600 N.E.2d 678, 65 Ohio St.3d 1435, denial of habeas corpus affirmed Caldwell v. Russell, 181 F.3d 731, 1999 Fed.App. 203P.—Const Law 268(5); Crim Law 700(9).

Ohio App. 5 Dist. 1987. A dispute of fact is "material," for purposes of precluding summary judgment, if it affects outcome of litigation.—Mount v. Columbus & Southern Ohio Elec. Co., 528 N.E.2d 1262, 39 Ohio App.3d 1.—Judgm 181(2).

Ohio App. 6 Dist. 2001. A "material" fact, for summary judgment purposes, is one which would affect the outcome of the suit under the applicable substantive law. Rules Civ.Proc., Rule 56.—Wood v. Dorcas, 757 N.E.2d 17, 142 Ohio App.3d 783.—Judgm 181(2).

Ohio App. 8 Dist. 1997. Factual dispute is "material," for purposes of summary judgment motion,

if it can affect outcome of trial. Rules Civ.Proc., Rule 56(C).—*Schmitz v. Bob Evans Farms, Inc.*, 697 N.E.2d 1037, 120 Ohio App.3d 264, appeal not allowed 684 N.E.2d 706, 80 Ohio St.3d 1414.—Judgm 181(2).

Ohio App. 8 Dist. 1995. On motion for summary judgment, disputed fact is "material" if it affects outcome of litigation, and is "genuine" if manifested by substantial evidence going beyond allegations of complaint.—*Burkes v. Stidham*, 668 N.E.2d 982, 107 Ohio App.3d 363.—Judgm 181(2).

Ohio App. 8 Dist. 1995. Favorable evidence is "material," and constitutional error results from its suppression by government, if there is a reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in outcome.—*State v. Apanovitch*, 667 N.E.2d 1041, 107 Ohio App.3d 82, dismissed, appeal not allowed 663 N.E.2d 1302, 75 Ohio St.3d 1474.—Crim Law 700(2.1).

Ohio App. 8 Dist. 1927. Code obligating surety for materials furnished in construction and performance of improvement includes only "material" used in construction in physical sense (Gen.Code, §§ 2365-1, 2365-4).—*Standard Oil Co. v. Detroit Fidelity & Sur. Co.*, 157 N.E. 418, 24 Ohio App. 237, 5 Ohio Law Abs. 813.—High 113(5); *Princ & S* 82(2); *Pub Contr* 50.

Ohio App. 9 Dist. 1993. In order to avoid summary judgment, dispute must be "material," in that the facts involved have the potential to affect the outcome of the lawsuit, and the issue to be tried must also be "genuine," allowing reasonable minds to return a verdict for the nonmoving party.—*Davidson v. CSX Transp.*, 631 N.E.2d 676, 91 Ohio App.3d 27.—Judgm 181(2).

Ohio App. 10 Dist. 1998. In determining whether prosecution improperly suppressed evidence favorable to accused, such evidence is deemed "material" only if there is reasonable probability that had evidence been disclosed to defense, result of proceeding would have been different. Rules Crim. Proc., Rule 16(B)(1)(f).—*State v. Harris*, 713 N.E.2d 528, 127 Ohio App.3d 626, dismissed, appeal not allowed 700 N.E.2d 331, 83 Ohio St.3d 1448.—Crim Law 700(2.1).

Ohio App. 10 Dist. 1993. State is subject to ongoing duty to disclose evidence favorable to defense, and failure of prosecutor to reveal exculpatory evidence can constitute denial of accused's due process rights where unrequested evidence has substantial value or, in other words, where such evidence is "material." U.S.C.A. Const.Amend. 14.—*State v. Rowe*, 637 N.E.2d 29, 92 Ohio App.3d 652, reconsideration denied 1994 WL 41312, dismissed, jurisdictional motion overruled 629 N.E.2d 1365, 69 Ohio St.3d 1403.—Const Law 268(5); Crim Law 627.8(1), 700(2.1).

Ohio App. 11 Dist. 1994. Father's false affidavits submitted with his motion to modify child support and spousal support were "material," thus

supporting his perjury conviction, even though his motion to modify was ultimately withdrawn so that statements did not actually result in decrease of support; father's motion and affidavits (which misstated father's expected net income and falsely stated that father was terminated from his employment) could have affected outcome of case if they were accepted as true. R.C. § 2921.11(A, B).—*State v. Bell*, 647 N.E.2d 193, 97 Ohio App.3d 576, appeal not allowed 645 N.E.2d 1259, 71 Ohio St.3d 1480.—Perj 11(3).

Ohio Com.Pl. 2001. For purposes of ruling on a motion for summary judgment, dispute of fact is "material" if it affects the outcome of the litigation. Rules Civ.Proc.Rule 56.—*Tomba v. Wickliffe*, 757 N.E.2d 421, 114 Ohio Misc.2d 1, reconsideration denied 757 N.E.2d 428, 114 Ohio Misc.2d 10.—Judgm 181(2).

Okl. 1993. Fact is "material," for purposes of motion for summary judgment, if proof of that fact would have effect of establishing or refuting one of the essential elements of cause of action. District Courts Rule 13, 12 O.S.A. Ch. 2, App.—*Brown v. Oklahoma State Bank & Trust Co. of Vinita*, 860 P.2d 230, 1993 OK 117.—Judgm 181(2).

Okl. 1992. Fact is "material," for summary judgment purposes, if proof of fact would have effect of establishing or refuting one of the essential elements of cause of action or defense asserted by the parties.—*Hadnot v. Shaw*, 826 P.2d 978, 1992 OK 21.—Judgm 181(2).

Okl. 1938. The statute requiring contractors on public construction to furnish a bond to state conditioned for payment of indebtedness incurred for "labor" or "material" furnished in construction of public improvements contemplates manual labor, not mechanical force, and material consumed, as distinguished from equipment used. 61 Okl.St. Ann. § 1, St.1931, § 10983.—U.S. *Fidelity & Guar. Co. v. Ed Hockaday & Co.*, 76 P.2d 911, 182 Okla. 73, 1938 OK 91.—States 101.

Okl. 1938. Dynamite, dynamite caps, blasting powder, fuse, white lead, filler con., solder, babbitt, turpentine, paint, sand, and nails constituted "material," within statute requiring public contractors to furnish to state a bond conditioned for payment of indebtedness incurred for material furnished, and recovery could be had by seller on builder's bond. 61 Okl.St. Ann. § 1, St.1931, § 10983.—U.S. *Fidelity & Guar. Co. v. Ed Hockaday & Co.*, 76 P.2d 911, 182 Okla. 73, 1938 OK 91.—States 101.

Okl. 1937. Under statute requiring bond conditioned that contractor shall pay all indebtedness incurred for labor or material furnished in construction of public improvements, term "material" does not include equipment. 61 Okl.St. Ann. § 1.—U. S. *Fidelity & Guaranty Co. v. Cagg*, 75 P.2d 412, 181 Okla. 569, 1937 OK 601.—*Bridges* 20(2.1); *Pub Contr* 49.

Okl. 1935. Statute requiring contractor to furnish bond conditioned for payment of indebtedness incurred for "labor" or "material" furnished in construction of public highway contemplates manu-

al labor, not mechanical force and material entirely consumed in such construction as distinguished from equipment. 61 Okl.St. Ann. § 1.—Green Const. Co. v. Chorn, 46 P.2d 499, 173 Okla. 85, 1935 OK 487.—High 113(5).

Okl. 1935. Hire for mule teams furnished to highway subcontractor to be used in grading and other work in constructing highway held not “labor” nor “material” within statutory bond conditioned for payment of all indebtedness incurred for labor or material furnished in construction of highway. 61 Okl.St. Ann. § 1.—Green Const. Co. v. Chorn, 46 P.2d 499, 173 Okla. 85, 1935 OK 487.—High 113(5).

Okl. 1931. Feed furnished subcontractor for teams used in making road improvement held “material” furnished in construction of road within terms of statutory bond. 61 Okl.St. Ann. § 1.—U. S. Fidelity & Guaranty Co. v. McCrackin, 298 P. 264, 148 Okla. 198, 1931 OK 144.—High 113(5).

Okl. 1929. Feed furnished subcontractor for teams used in paving highway held “material,” within statutory bond, for which surety is liable. 61 Okl.St. Ann. § 1.—Hyde Const. Co. v. Frickschmidt, 284 P. 34, 140 Okla. 290, 1929 OK 565.—High 113(5).

Okl. 1915. “Material” is something of solid or weighty character; substantial; of consequence; not to be dispensed with; important; specific; especially law, such as does or would affect the determination of a case, the effect of an instrument, or the like; constituting a matter that is entitled to consideration; such as must be considered in deciding a case on its merits, and evidence offered in a cause, or a question propounded, is material when it is relevant and goes to the substantial matters in dispute, or has a legitimate and effective influence or bearing on the decision of the case.—Connecticut Fire Ins. Co. of Hartford, Conn. v. George, 153 P. 116, 52 Okla. 432, 1915 OK 936.

Okl. Crim. App. 1996. Evidence allegedly favorable to defendant is “material,” for purposes of claim that prosecution violated *Brady v. Maryland* by failing to supply that evidence to defendant upon request, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; mere possibility that item of undisclosed information might have helped defense or affected outcome does not establish materiality.—Knighton v. State, 912 P.2d 878, 1996 OK CR 2, rehearing denied, certiorari denied 117 S.Ct. 120, 519 U.S. 841, 136 L.Ed.2d 71, denial of habeas corpus affirmed 293 F.3d 1165, certiorari denied 123 S.Ct. 1588, 155 L.Ed.2d 325.—Crim Law 700(2.1).

Okl. Crim. App. 1995. Evidence favorable to accused is “material” so as to violate due process if suppressed by prosecution upon request, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const. Amend. 14.—Newsted v. State, 908 P.2d 1388, 1995 OK CR 75.—Const Law 268(5).

Okl. Crim. App. 1993. Exculpatory evidence suppressed by state is “material,” so as to violate due process, if there is any reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const. Amends. 5, 14.—Sadler v. State, 846 P.2d 377, 1993 OK CR 2.—Const Law 268(5).

Okl. Crim. App. 1992. Defendant asserting error in state’s failure to reveal to defense, before trial, all exculpatory evidence that is material to defense must show that the evidence was “material”; that is, that it can be demonstrated that there is reasonable probability that verdict would have been different had information been disclosed.—Castro v. State, 844 P.2d 159, 1992 OK CR 80, certiorari denied 114 S.Ct. 135, 510 U.S. 844, 126 L.Ed.2d 98, denial of post-conviction relief affirmed 880 P.2d 387, 1994 OK CR 53, certiorari denied 115 S.Ct. 1375, 514 U.S. 1024, 131 L.Ed.2d 229, dismissal of habeas corpus affirmed 138 F.3d 810, certiorari denied 119 S.Ct. 422, 525 U.S. 971, 142 L.Ed.2d 343.—Crim Law 700(2.1).

Okl. Crim. App. 1991. Although prosecution’s failure to produce videotape of polygraph examination of defendant, during which defendant denied any knowledge of murder and victim and denied committing murder, was error in light of defense request for production, tape was not “material” to defense for *Brady* purposes, particularly as it was merely cumulative to defendant’s trial testimony and prepared defense of noninvolvement, and the failure to disclose did not deprive defendant of fair trial, despite claim that tape would have cast doubt upon credibility of prosecution witness who testified that defendant had announced his guilt to entire county jail; defense counsel was able to thoroughly test witness’ credibility on that issue without videotape, and while tape reflected defendant’s denial of crime, it also demonstrated lack of credibility.—Williamson v. State, 905 P.2d 1135, 1991 OK CR 96.—Crim Law 700(3).

Okl. Crim. App. 1911. Webster defines “material” to be something “of solid or weighty character; substantial; of consequence; not to be dispensed with; important; specific; especially law, such as does or would affect the determination of a case, the effect of an instrument, or the like; constituting a matter that is entitled to consideration; such as must be considered in deciding a case on its merits.”—Thompson v. State, 117 P. 216, 6 Okla. Crim. 50, 1911 OK CR 254.

Or. 2000. “Material” facts, for purposes of disciplinary rule prohibiting attorney’s misrepresentation of material information, are those that, had they been known by the court or other decision-maker, would or could have influenced the decision-making process significantly. Code of Prof. Resp., DR 1-102(A)(3).—In re Conduct of Huffman, 13 P.3d 994, 331 Or. 209.—Att’y & C 42.

Or. 2000. Fact is “material,” within meaning of attorney disciplinary rule governing affirmative misstatements and nondisclosure of a material fact, if it is information that, if known, would be significant to the recipient. Code of Prof. Resp., DR

1-102(A)(3).—In re Conduct of Brandt, 10 P.3d 906, 331 Or. 113.—Atty & C 37.1.

Or. 1998. Whether fact or proposition is “material” is determined by pleadings and substantive law.—State v. Hayward, 963 P.2d 667, 327 Or. 397.—Crim Law 382.

Or. 1998. Wife’s contribution to husband’s medical training was “material” and “substantial,” within meaning of statute authorizing dissolution court to treat enhanced earning capacity as property, where she worked full time to support family and performed all domestic tasks during the training, contributed directly to his school expenses by lessening his need for loans, and was continually willing to uproot, move, and find new jobs. ORS 107.105(1)(f).—Matter of Marriage of Denton, 951 P.2d 693, 326 Or. 236.—Divorce 252.3(1).

Or. 1998. In determining whether one spouse’s separate contributions to enhanced earning capacity enjoyed by other spouse were “material” and “substantial,” within meaning of statute authorizing dissolution court to treat the enhanced capacity as property, contributions must be considered together as whole. ORS 107.105(1)(f).—Matter of Marriage of Denton, 951 P.2d 693, 326 Or. 236.—Divorce 252.3(1).

Or. 1998. In determining whether one spouse’s contribution to enhanced earning capacity enjoyed by other spouse was “material” and “substantial,” within meaning of statute authorizing dissolution court to treat the enhanced capacity as property, contribution need not be essential in “but for” sense; it need only facilitate acquisition of the enhancement in major, as opposed to incidental, way. ORS 107.105(1)(f).—Matter of Marriage of Denton, 951 P.2d 693, 326 Or. 236.—Divorce 252.3(1).

Or. 1988. Whether one’s assistance in the unlawful sale of a security is “material” does not depend on one’s knowledge of the facts that make it unlawful; it depends on the importance of one’s personal contribution to the transaction. ORS 59.115(3).—Prince v. Brydon, 764 P.2d 1370, 307 Or. 146.—Sec Reg 302.

Or. 1969. To be “material” a violation of Corrupt Practices Act must be capable of having some possible effect upon the election. ORS 251.015–251.090, 260.050, 260.370, 260.380(1).—Thornton v. Johnson, 453 P.2d 178, 253 Or. 342, motion denied 454 P.2d 647, 253 Or. 342.—Elections 231.

Or. 1968. Primary campaign statements urging voters to “re-elect” candidate who at time of campaign was not an incumbent senator were “material” and required that candidate be deprived of nomination even in absence of allegation and proof that violation of Corrupt Practices Act affected outcome of election. ORS 251.025, 260.430.—Cook v. Corbett, 446 P.2d 179, 251 Or. 263.—Elections 231.

Or. 1964. Answer asserting that if former wife suing for alienation of affections had married former husband the marriage was void, terminated, or

dissolved long prior to alleged cause of action set forth new matter, but those averments were not “material” within statute providing that material allegation not specifically controverted by reply shall be taken as true, since those averments merely particularized grounds for denial of former wife’s allegation of marriage, and failure to controvert the averment did not make wife’s pleadings defective. ORS 16.610, 16.620.—Edgren v. Reissner, 396 P.2d 564, 239 Or. 212.—Hus & W 332; Plead 182.

Or. 1933. Claim for price of portion of old house which claimant sold and moved to another lot, putting it on foundation constructed by buyer, held lienable as claim for “material” furnished. ORS 87.010.—Johnson v. Heightsman, 21 P.2d 786, 143 Or. 114.—Mech Liens 45.

Or. 1920. Food for horses used in the improvement of a street is “material” within the meaning of a bond executed under L.O.L. § 6266, ORS 279.520 et seq., and Portland City Charter, § 162, for the protection of subcontractor’s materialmen and laborers.—City of Portland v. New England Casualty Co., 189 P. 211, 96 Or. 48.—Mun Corp 347(2).

Or. 1913. Supplies furnished by plaintiff for boarding and maintaining men engaged in constructing a pipe line, pursuant to a contract for its construction by defendant for a city, were embraced within the terms of the original contract, which required defendant to furnish all “material” and do all the work required to construct the line.—Baker City Mercantile Co. v. Idaho Glazed Cement Pipe Co., 136 P. 23, 67 Or. 372.

Or.App. 1997. Breach of agreement is “material” if it goes to very substance of contract and defeats object of parties in entering into contract.—Crain v. Siegel, 950 P.2d 382, 151 Or.App. 567.—Contracts 317.

Or.App. 1996. Wife’s contribution to husband’s medical education was not “material” or “substantial” or “of prolonged duration,” within meaning of statute authorizing court to treat enhanced earning capacity as property, even though wife worked to defray living expenses, allowed husband to borrow her car, withdrew from her savings for sundry expenses, and performed the domestic chores; direct educational expenses were paid by loans and substantial grants and scholarships, husband already had bachelor’s and master’s degrees before the parties married, and there was no showing as to how wife’s performance of household tasks facilitated husband’s education. ORS 107.105(1)(f).—Matter of Marriage of Denton, 930 P.2d 239, 145 Or.App. 381, review allowed 936 P.2d 363, 325 Or. 247, affirmed in part, reversed in part 951 P.2d 693, 326 Or. 236.—Divorce 252.3(1).

Or.App. 1996. Supported spouse’s gratitude does not determine whether such support was “material,” “substantial,” or “prolonged,” within meaning of statute requiring court to treat enhanced earning capacity as property when other spouse has contributed to the acquisition of it. ORS 107.105(1)(f).—Matter of Marriage of Denton, 930 P.2d 239, 145 Or.App. 381, review allowed 936 P.2d

363, 325 Or. 247, affirmed in part, reversed in part 951 P.2d 693, 326 Or. 236.—Divorce 252.3(1).

Or.App. 1993. Where ex-wife sought to set aside consent dissolution judgment on grounds of ex-husband's failure to disclose value of his Public Employee Retirement System (PERS) account, it was essential part of ex-wife's burden to prove that misrepresentation was "material," such that ex-husband's failure to disclose value would have affected ex-wife's proposed settlement. Rules Civ.Proc., Rule 71, subd. B(1)(c).—Matter of Marriage of Auble, 866 P.2d 1239, 125 Or.App. 554, review denied 871 P.2d 123, 318 Or. 478.—Divorce 254(2).

Or.App. 1993. For statement to be "material" for purposes of perjury statute, it is not required that false statement actually affect proceeding or transaction; it is enough that statement could have affected its course or outcome. ORS 162.055(2), 162.065(1).—State v. Romero, 854 P.2d 1001, 121 Or.App. 256.—Perj 11(2).

Or.App. 1984. False statement need not bear on ultimate fact issue in dispute to be "material" within meaning of perjury statute. ORS 162.055, 162.055(2).—State v. Wood, 678 P.2d 1238, 67 Or. App. 218, review denied 681 P.2d 134, 297 Or. 124.—Perj 11(8).

Or.App. 1980. Where the credibility of a witness is in dispute, certain evidence bearing on credibility may be "material," as required to sustain perjury conviction for material false testimony. ORS 162.065.—State v. Darnell, 619 P.2d 1321, 49 Or.App. 461.—Perj 11(9).

Or.App. 1978. In prosecution of defendant for perjury for false testimony given in prior proceeding setting aside forged satisfaction of judgment, defendant's false statements in that proceeding bearing on facts other than ultimate facts, such as where and how he got substantial sum he claimed to have paid judgment creditor, were "material."—State v. Ray, 584 P.2d 366, 36 Or.App. 375, review denied 284 Or. 521.—Perj 11(2).

Pa. 2002. Where the request for exculpatory evidence is general rather than specific, evidence is "material," as element of prosecution's *Brady* due process duty to disclose material exculpatory evidence, if the omitted evidence creates a reasonable doubt that did not otherwise exist. U.S.C.A. Const. Amend. 14.—Com. v. Marinelli, 810 A.2d 1257, 570 Pa. 622.—Const Law 268(5).

Pa. 2001. When knowledge or ignorance of certain information would influence the decision of an insurer in issuing a policy, assessing the nature of the risk, or setting premium rates, that information is deemed "material" to the risk assumed by the insurer.—Rohm and Haas Co. v. Continental Cas. Co., 781 A.2d 1172, 566 Pa. 464.—Insurance 2958, 2964.

Pa. 1941. Inquiries of an applicant for a life policy as to prior medical attendance are "material" to the risk, and false answers thereto permit the insurer to avoid the policy.—Prevete v. Metropolitan Life Ins. Co., 22 A.2d 691, 343 Pa. 365.—Insurance 3003(10).

Pa. 1934. Rental due by sewer contractor under lease of ditcher scoop *held* not 'labor and material' claim within contractor's bond insuring payment of labor and material claims (53 PS § 12198-1905). The word "material" within a contractor's bond does not include machinery, tools, or appliances used for the purpose of facilitating the contractor's work. The word 'labor' should be confined to its primary meaning, and should not be broadened so as to carry the liability of a surety to indefinite and un contemplated lengths, and does not include rentals.—City of Lancaster, to Use of Keystone Driller Co. v. George, 172 A. 686, 315 Pa. 232.—Mun Corp 347(1).

Pa. 1930. Change in written instrument making new stipulation or condition is "material."—Newman to Use of Wright v. Cover, 150 A. 595, 300 Pa. 267.—Alt of Inst 2.

Pa. 1930. If legal effect is substantially changed, additionally burdening makers, alteration of note is "material" without making instrument different as respects third persons.—Newman to Use of Wright v. Cover, 150 A. 595, 300 Pa. 267.—Alt of Inst 5(2).

Pa.Super. 2002. A misrepresentation will be deemed "material," for purposes of supporting a claim for fraudulent misrepresentation, where it is of such character that, had it not been made, the transaction would not have been consummated.—Skurnowicz v. Lucci, 798 A.2d 788.—Fraud 18.

Pa.Super. 2002. Vendors' misrepresentation to purchasers during negotiations for sale of home, that they had never experienced drainage problems on property, was "material," as required to support claim for fraudulent misrepresentation after purchasers experienced continual flooding on property; vendors knew that purchasers intended to use that portion of lot to restore automobiles, and purchasers never would have purchased home if they had known of flooding problems.—Skurnowicz v. Lucci, 798 A.2d 788.—Fraud 18.

Pa.Super. 2000. Evidence is "material" for *Brady* purposes only if there is a reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different, with a "reasonable probability" being a probability sufficient to undermine confidence in outcome.—Com. v. Lambert, 765 A.2d 306.—Crim Law 700(2.1).

Pa.Super. 1997. Misrepresentation or concealment will be considered "material" if it is of such character that had it not been made, transaction would not have been consummated. Restatement (Second) of Torts § 550.—Sewak v. Lockhart, 699 A.2d 755.—Fraud 18.

Pa.Super. 1997. Misrepresentation innocently made is actionable in fraud if it relates to matter material to transaction involved; misrepresentation is "material" when it is of such character that if it had not been made, transaction would not have occurred.—Bortz v. Noon, 698 A.2d 1311, reargument denied, appeal granted 723 A.2d 668, 555 Pa. 695, reversed 729 A.2d 555, 556 Pa. 489.—Fraud 13(3), 18.

Pa.Super. 1994. Evidence is "material" to guilt or punishment, and must be disclosed to defendant if favorable, when there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in the outcome. Rules Crim. Proc., Rule 305, subd. B, 42 Pa.C.S.A.—Com. v. Jones, 637 A.2d 1001, 432 Pa.Super. 97.—Crim Law 700(2.1).

Pa.Super. 1992. Misrepresentation is "material" if it is of such character that, had it not been made, transaction would not have been consummated.—Sevin v. Kelshaw, 611 A.2d 1232, 417 Pa.Super. 1.—Fraud 18.

Pa.Super. 1992. Evidence is "material" and must be disclosed by Commonwealth to defense counsel only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is a probability sufficient to undermine confidence in the outcome. Rules Crim.Proc., Rule 305, subd. B(1)(g), 42 Pa.C.S.A.—Com. v. Ulen, 607 A.2d 779, 414 Pa.Super. 502, appeal granted 620 A.2d 491, 533 Pa. 624, remanded 650 A.2d 416, 539 Pa. 51.—Crim Law 700(2.1).

Pa.Super. 1940. A motor truck, purchased by school district, is "school supply" within statute declaring school director, asking for or accepting money to vote for purchase of school supplies guilty of misdemeanor, as such truck is not "material" needed in connection with maintenance of school buildings, but "that which supplies a want" within definition of "supply", since its use for transportation of furniture, equipment, books, etc., for use in various schools of district may reasonably be construed to be for educational purposes. 24 P.S. §§ 1-101 note, 7-701 et seq., 8-801 et seq., 8-805, 8-810, 1480, 1595.—Com. v. Zang, 16 A.2d 745, 142 Pa.Super. 573.—Brib 1(2).

Pa.Super. 1933. Rollers and graders hired to subcontractor for construction of highway without furnishing operators held not "labor" or "material" within highway contractor's bond, since apparatus was not intended to go into completed structure. 36 P.S. § 142.—Com. to Use of Howard W. Read Corp. v. A. Stryker, Inc., 167 A. 459, 109 Pa.Super. 137.—High 113(5).

Pa.Cmwlt. 1980. For purposes of ruling upon motion for summary judgment fact is "material" if it directly affects disposition of case. Pa.R.C.P. No. 1035(b), 42 Pa.C.S.A.—Allen v. Colautti, 417 A.2d 1303, 53 Pa.Cmwlt. 392.—Judgm 181(2).

R.I. 1990. Evidence not disclosed by prosecution in criminal trial is "material," whether or not requested by defense, if there is reasonable probability that disclosure of such information would have changed outcome of proceeding.—State v. Burke, 574 A.2d 1217.—Crim Law 700(2.1).

S.C. 1996. Impeachment or exculpatory evidence is "material," for purposes of determining if it is subject to disclosure by state to defendant pursuant to *Brady*, only if there is a reasonable

probability that, had evidence been disclosed to defense, result of proceeding would have been different.—State v. Von Dohlen, 471 S.E.2d 689, 322 S.C. 234, rehearing denied, certiorari denied 117 S.Ct. 402, 519 U.S. 972, 136 L.Ed.2d 316.—Crim Law 700(2.1), 700(4).

S.C. 1996. Material variance between charge and proof entitles defendant to directed verdict; variance is not "material" if it is not element of offense.—State v. Evans, 470 S.E.2d 97, 322 S.C. 78, rehearing denied.—Crim Law 753.2(2); Ind & Inf 171.

S.C. 1993. Material variance between charge in indictment and proof entitles defendant to directed verdict; such variance is not "material" if it is not element of offense.—State v. Gunn, 437 S.E.2d 75, 313 S.C. 124, certiorari denied Childers v. South Carolina, 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383.—Crim Law 753.2(2).

S.C. 1903. There is a wide distinction between "material" and "appliance." The term "appliance" refers to machinery and all the instruments used in operating it. "Materials" include everything of which anything is made. A master must use ordinary care in instructing a servant as to the use of materials furnished and is only required to use ordinary care in furnishing materials to be manufactured.—Gallman v. Union Hardwood Mfg. Co., 43 S.E. 524, 65 S.C. 192.

S.C.App. 1998. Witness' exculpatory statements were not "material" under *Brady* disclosure rule or discovery rule, in prosecution for contempt, where defendant discovered information at issue and called witness at trial. U.S.C.A. Const.Amends. 5, 14; Rules Crim.Proc., Rule 5.—State v. Kennerly, 503 S.E.2d 214, 331 S.C. 442, rehearing denied, and certiorari granted, affirmed 524 S.E.2d 837, 337 S.C. 617.—Crim Law 700(3).

S.C.App. 1998. Under *Brady* disclosure rule, evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amends. 5, 14.—State v. Kennerly, 503 S.E.2d 214, 331 S.C. 442, rehearing denied, and certiorari granted, affirmed 524 S.E.2d 837, 337 S.C. 617.—Crim Law 700(2.1).

S.C.App. 1998. Under *Brady* disclosure rule, information is not deemed "material" if the defense discovers the information in time to adequately use it at trial. U.S.C.A. Const.Amends. 5, 14.—State v. Kennerly, 503 S.E.2d 214, 331 S.C. 442, rehearing denied, and certiorari granted, affirmed 524 S.E.2d 837, 337 S.C. 617.—Crim Law 700(2.1).

S.C.App. 1998. Under discovery rule requiring prosecution to disclose evidence material to preparation of defense upon request of defendant, test for whether evidence is "material" is determined by employing same test as that used in *Brady* disclosure rule context. U.S.C.A. Const.Amends. 5, 14; Rules Crim.Proc., Rule 5.—State v. Kennerly, 503 S.E.2d 214, 331 S.C. 442, rehearing denied, and

certiorari granted, affirmed 524 S.E.2d 837, 337 S.C. 617.—Crim Law 627.5(1).

S.C.App. 1997. Photograph of motorist arrested on DUI charges and notation "appears OK" on second page of booking report were not "material," and thus, failure of prosecution to produce page during discovery was not a *Brady* violation and could not be basis for dismissal or sanctions.—Fradella v. Town of Mount Pleasant, 482 S.E.2d 53, 325 S.C. 469, rehearing denied, and certiorari denied.—Crim Law 700(3).

S.C.App. 1996. Variance between indictment and evidence at trial with respect to defendant's accomplice was not "material" so as to entitle defendant to directed verdict; name of accomplice was not material element of drug distribution charges and at most, this matter was mere surplusage and state was not required to introduce proof thereof.—State v. Watts, 467 S.E.2d 272, 321 S.C. 158.—Ind & Inf 180.

S.C.App. 1996. Variance between indictment and state's proof at trial is not "material," so as to entitle defendant to directed verdict, where the matter alleged is not element of the offense.—State v. Watts, 467 S.E.2d 272, 321 S.C. 158.—Crim Law 753.2(2); Ind & Inf 171.

S.D. 2001. A change made to a bid is "material" when it gives one bidder a substantial advantage or benefit not enjoyed by the other bidders.—H & W Contracting, LLC v. City of Watertown, 633 N.W.2d 167, 2001 SD 107.—Pub Contr 12.

S.D. 1994. Evidence established that mutual mistake as to existence of foundation defect at time of sale of home was "material," for purposes of purchasers' claim for equitable rescission; purchaser testified that he would not have bought house had he known that house was constructed on inadequate support, and vendors acknowledged that nobody would purchase home if they knew of the latent defect. SDCL 53-4-9; Restatement (Second) of Contracts § 152.—Knudsen v. Jensen, 521 N.W.2d 415, rehearing denied.—Ven & Pur 44.

S.D. 1993. Statement is "material," as required to support perjury conviction, if it has legitimate tendency to prove or disprove some relevant fact irrespective of main fact at issue, or is capable of influencing court, officer, tribunal or other body created by law on any proper matter of inquiry. SDCL 22-29-1.—State v. French, 509 N.W.2d 698.—Perj 11(2).

Tenn. 2001. In the typical case involving modification of spousal support awards, a change in circumstances is considered to be "material" when the change: (1) occurred since the entry of the divorce decree ordering the payment of alimony; and (2) was not anticipated or within the contemplation of the parties at the time they entered into the property settlement agreement. T.C.A. § 36-5-101(a)(1).—Bogan v. Bogan, 60 S.W.3d 721.—Divorce 245(2).

Tenn. 1999. Fact is "material," for summary judgment purposes, if it must be decided in order to resolve the substantive claim or defense at which

the motion is directed. Rules Civ.Proc., Rule 56.01 et seq.—Luther v. Compton, 5 S.W.3d 635.—Judgm 181(2).

Tenn. 1996. Summary judgment is not appropriate if record contains genuine issues as to any material fact; fact is "material" if it must be decided in order to resolve substantive claim or defense at which motion is directed. Rules Civ.Proc., Rule 56.—Hembree v. State, 925 S.W.2d 513, appeal after remand 2001 WL 575561.—Judgm 181(2).

Tenn. 1995. Evidence that state had paid inmate incarcerated with defendant \$1,000 to procure witness to testify to defendant's inculpatory statements was not "material," for *Brady* purposes, where inmate himself never testified or put his credibility at issue and never shared or agreed to share money with witness procured. U.S.C.A. Const.Amend. 6.—Hartman v. State, 896 S.W.2d 94, appeal after remand 2000 WL 631400, reversed 42 S.W.3d 44.—Crim Law 700(3).

Tenn. 1993. Disputed fact is "material" for summary judgment purposes if it must be decided in order to resolve substantive claim or defense at which summary judgment motion is directed. Rules Civ.Proc., Rules 1, 11, 56.01 et seq.—Byrd v. Hall, 847 S.W.2d 208.—Judgm 181(2).

Tenn. 1984. Variance between indictment and proof in criminal case is not "material" where allegations and proof substantially correspond, and where variance could not have misled defendant at trial and is not such as to deprive accused of his right to be protected against another prosecution for same offense. U.S.C.A. Const.Amend. 5.—State v. Moss, 662 S.W.2d 590.—Ind & Inf 171.

Tenn.Crim.App. 1998. Evidence favorable to an accused under *Brady* includes that which may be used to impeach the prosecution's witnesses; however, such evidence is deemed "material," and thus subject to disclosure, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—State v. Copeland, 983 S.W.2d 703.—Crim Law 700(4).

Tenn.Crim.App. 1996. Statements given by defendant's alleged girlfriend regarding defendant's prior drug use and alleged efforts to manufacture alibi following robbery were not "material" to defense such that failure to disclose them violated *Brady* or criminal discovery rule; statements were not favorable and merely would have corroborated much of testimony given by codefendant, and, contrary to defendant's contention, statements could not be used to impeach another witness' testimony. Rules Crim.Proc., Rule 16.—State v. Parker, 932 S.W.2d 945, appeal denied.—Crim Law 700(3).

Tenn.Crim.App. 1994. To warrant reversal, evidence not disclosed pursuant to timely *Brady* motion must be "material" in constitutional sense, that is, it must create reasonable doubt about defendant's guilt; if undisclosed evidence had been available and were used effectively, judgment must be reversed if use of evidence might have made differ-

ence between conviction and acquittal. U.S.C.A. Const.Amend. 14.—*State v. Philpott*, 882 S.W.2d 394, appeal denied.—Crim Law 700(2.1).

Tenn.Ct.App. 2002. TennCare memoranda stating that home health care services were covered by Medicaid only if medically necessary were not “material” to whether home health care services for recipient were medically necessary and thus were not material within meaning of statute permitting application for leave to present additional material evidence. West’s T.C.A. § 4–5–322(e).—*Jones v. Bureau of TennCare*, 94 S.W.3d 495, appeal denied.—Health 474.

Tenn.Ct.App. 2001. A fact is “material,” for summary judgment purposes, if it must be decided in order to resolve the substantive claim or defense at which the motion is directed.—*Chambers v. City of Chattanooga*, 71 S.W.3d 281, appeal denied, recommended for publication.—Judgm 181(2).

Tenn.Ct.App. 2000. A disputed fact is “material,” as element for determining whether summary judgment is appropriate, if it must be decided in order to resolve the substantive claim or defense at which the motion for summary judgment is directed. Rules Civ.Proc., Rule 56.04.—*Hillard v. Franklin*, 41 S.W.3d 106, appeal denied, recommended for publication.—Judgm 181(2).

Tenn.Ct.App. 1999. Disputed fact is “material” if it must be decided in order to resolve substantive claims or defenses at which the summary judgment motion is directed. Rules Civ.Proc., Rule 56.01.—*Belk v. Obion County*, 7 S.W.3d 34, appeal denied.—Judgm 181(2).

Tenn.Ct.App. 1933. Misrepresentation is “material” so as to defeat life policy if it would naturally and reasonably influence insurer and induce it to decline application. Shannon’s Code, § 3306.—*Interstate Life & Acc. Co. v. Potter*, 68 S.W.2d 119, 17 Tenn.App. 381.—Insurance 3001.

Tex. 1979. In suit involving issue of whether employee’s deviation for personal pleasure at time and place of accident was such as to avoid coverage under omnibus clause of employer’s comprehensive automobile liability policy, “minor deviation” rule, under which court must determine in each instance whether deviation was “minor” or “material,” taking into account extent of deviation and actual distance or time, purposes for which vehicle was given and other factors would be adopted.—*Coronado v. Employers Nat. Ins. Co.*, 596 S.W.2d 502.—Insurance 2667.

Tex. 1950. The word “material” means important, more or less necessary, having influence or effect, going to merits, having to do with matter as distinguished from forms.—*Thompson v. Lee Roy Crawford Produce Co.*, 233 S.W.2d 295, 149 Tex. 357.

Tex. 1941. Generally, any evidence which tends to prove or disprove any material fact involved in the issue or question being tried or throws light on the transaction involved is “relevant” and “material.”—*Lone Star Gas Co. v. State*, 153 S.W.2d 681, 137 Tex. 279.—Evid 99, 143.

Tex.Com.App. 1937. Declarations of juror, during deliberations concerning damages, that juror believed plaintiff’s testimony concerning damages, rather than testimony of physician who treated plaintiff, because juror once lost a leg and continued to suffer pains, held to require new trial, since declarations constituted giving of “material” new testimony within statute relating to misconduct of jury. Rules of Civil Procedure, rule 327.—*El Paso Electric Co. v. Cannon*, 99 S.W.2d 907, 128 Tex. 613.—New Tr 44(3).

Tex.Com.App. 1928. Jury’s misconduct is not “material” within statute providing for new trial, where portion of verdict affected is remitted. Rules of Civil Procedure, rules 315, 327.—*International-Great Northern R. Co. v. Cooper*, 1 S.W.2d 578.—New Tr 56.

Tex.Crim.App. 2000. Evidence withheld by a prosecutor is “material” so as to trigger *Brady* rule if there is a reasonable probability that, had the evidence been disclosed to the defense, the outcome of the proceeding would have been different.—*Wyatt v. State*, 23 S.W.3d 18, rehearing denied.—Crim Law 700(2.1).

Tex.Crim.App. 1996. For purposes of prosecutor’s affirmative duty under *Brady* to turn over material, exculpatory evidence, evidence withheld by prosecutor is “material” if there is reasonable probability that, had evidence been disclosed to defense, outcome of proceeding would have been different. U.S.C.A. Const.Amend. 14.—*McFarland v. State*, 928 S.W.2d 482, rehearing denied, certiorari denied 117 S.Ct. 966, 519 U.S. 1119, 136 L.Ed.2d 851.—Crim Law 700(2.1).

Tex.Crim.App. 1995. Evidence withheld by prosecutor is “material” for purposes of due process clause as interpreted by *Brady*, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 5, 14.—*Curry v. State*, 910 S.W.2d 490.—Const Law 268(5).

Tex.Crim.App. 1993. Evidence withheld by prosecutor is “material” within meaning of *Brady* if there is reasonable probability that, had evidence been disclosed to the defense, outcome of proceeding would have been different, and “reasonable probability” is probability sufficient to undermine confidence in the outcome of the trial.—*Ex parte Kimes*, 872 S.W.2d 700, rehearing denied.—Crim Law 700(2.1).

Tex.Crim.App. 1993. Use of perjured testimony will be found to be “material” so as to violate due process clause unless reviewing court is convinced beyond reasonable doubt that perjury did not contribute to conviction or punishment. Rules App. Proc., Rule 81(b)(2); U.S.C.A. Const.Amend. 14.—*Ex parte Castellano*, 863 S.W.2d 476.—Const Law 268(9).

Tex.Crim.App. 1993. Use by prosecution of perjured testimony in arson trial was “material” violating due process clause of Fourteenth Amendment, where court could not determine beyond reasonable doubt that perjured testimony made no contri-

bution to defendant's conviction. Rules App.Proc., Rule 81(b)(2); U.S.C.A. Const.Amend. 14.—Ex parte Castellano, 863 S.W.2d 476.—Const Law 268(9); Crim Law 706(2).

Tex.Crim.App. 1992. Suppression by prosecution of evidence favorable to accused violates due process clause if evidence is material to guilt or punishment; such evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const. Amend. 14.—Harris v. State, 827 S.W.2d 949, certiorari denied 113 S.Ct. 381, 506 U.S. 942, 121 L.Ed.2d 292, certificate of probable cause denied 81 F.3d 535, certiorari denied 116 S.Ct. 1863, 517 U.S. 1227, 134 L.Ed.2d 961.—Const Law 268(5).

Tex.Crim.App. 1980. Definition of "material" in statute defining crime of aggravated perjury was not unconstitutionally vague in that issue of "materiality" was not whether false statement in fact affected the course or outcome of the proceedings, but whether it was such testimony as could have affected course or outcome of such proceedings, and thus "materiality" referred to misstatements having some substantial potential for obstructing justice and excluded utterly trivial falsifications. V.T.C.A., Penal Code §§ 37.03, 37.04, 37.04(a, c).—Mitchell v. State, 608 S.W.2d 226.—Perj 2.

Tex.Crim.App. 1928. Evidence held to require instruction defining "equipment for manufacturing intoxicating liquor"; "equipment"; "material". Vernon's Ann.P.C. art. 666-1 et seq.—Oliver v. State, 8 S.W.2d 184, 110 Tex.Crim. 263.—Crim Law 800(1).

Tex.App.—Houston [1 Dist.] 2001. An omission or misrepresentation is "material," under Texas Securities Act's provision making a securities seller liable for an untruth or omission regarding a material fact, if there is a substantial likelihood that a reasonable investor would consider it important in deciding to invest. Vernon's Ann.Texas Civ.St. art. 581-33, subd. A(2).—Texas Capital Securities, Inc. v. Sandefer, 58 S.W.3d 760, review denied (2 pets.).—Sec Reg 278.

Tex.App.—Houston [1 Dist.] 2001. An investor is not required to prove that he would have acted differently but for the omission or misrepresentation, for the omission or misrepresentation to be "material," under Texas Securities Act's provision making a securities seller liable for an untruth or omission regarding a material fact. Vernon's Ann.Texas Civ.St. art. 581-33, subd. A(2).—Texas Capital Securities, Inc. v. Sandefer, 58 S.W.3d 760, review denied (2 pets.).—Sec Reg 278.

Tex.App.—Houston [1 Dist.] 1996. The only prerequisite for false statement to be "material," for purposes of aggravated perjury, is whether it could affect course or outcome of proceeding, and extent of additional materiality is not important; perjury may be assigned on false statements as to facts that are collaterally, remotely, or circumstantially material. V.T.C.A., Penal Code § 37.04(a).—Ly v. State, 931 S.W.2d 22.—Perj 11(2).

Tex.App.—Houston [1 Dist.] 1996. Defendant's false statement that he was attorney was sufficiently "material" to hearing held to determine whether tenants had assets sufficient to post appeal bond in forcible entry and detainer suit to support aggravated perjury conviction; attorney representing tenants thought that defendant's false statement added credibility to defendant's testimony, attorney attributed his loss to defendant's testimony because defendant was the only adverse witness, and justice of peace did not know whether his decision would have been same if defendant had not claimed to be attorney. V.T.C.A., Penal Code § 37.04(a).—Ly v. State, 931 S.W.2d 22.—Perj 11(9).

Tex.App.—Houston [1 Dist.] 1994. Physician adequately showed that discovery of materials he sought prior to ruling on motion for summary judgment by medical clinic in suit alleging contract, combination, or conspiracy in restraint of trade in violation of Texas Free Enterprise and Antitrust Act based on clinic's refusal to refer patients to physician were "material" to his antitrust claims, where discovery requests indicated that physician was seeking to obtain information that would link clinic's actions in refusing to refer patients to him with actions or policies of insurer and only by establishing such language would physician be able to show conspiracy to restrain trade, and type of information physician sought to obtain would not be readily available to him by any means other than discovery process. V.T.C.A., Bus. & C. § 15.05(a); Vernon's Ann.Texas Rules Civ.Proc., Rule 166a(g).—Levinthal v. Kelsey-Seybold Clinic, P.A., 902 S.W.2d 508, appeal after remand 1997 WL 282263.—Monop 25(1).

Tex.App.—Houston [1 Dist.] 1988. Absence of crime reconstruction expert's opinion testimony, due to his death, was not sufficiently "material" to warrant mistrial, indefinite delay in proceedings to locate new expert, or new trial; defendant was able to elicit from State's expert same opinion that his own expert would have offered and testimony of another expert would have been merely cumulative.—Rische v. State, 746 S.W.2d 287, cause remanded 755 S.W.2d 477, on remand 757 S.W.2d 518, petition for discretionary review refused, appeal after remand 834 S.W.2d 942, rehearing denied, and petition for discretionary review refused.—Crim Law 596(1), 867, 913(3).

Tex.App.—Houston [1 Dist.] 1982. Information which alleged exhibition of film as "obscene material" was not defective merely by reason of fact that penal statute defines motion picture as "performance" and exhibition of performance is not prohibited under statute, since "motion picture" is also included in definition of "material." V.T.C.A., Penal Code §§ 43.21(a)(2, 3), 43.23(c)(1).—Sanders v. State, 649 S.W.2d 59, petition for discretionary review granted, vacated 770 S.W.2d 778, opinion after remand 1987 WL 9204.—Obscen 6.

Tex.App.—Fort Worth 2002. Favorable evidence is "material," for the purposes of an alleged Brady violation, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.

U.S.C.A. Const.Amend. 14.—*Franks v. State*, 90 S.W.3d 771, rehearing overruled, and rehearing overruled.—Crim Law 700(2.1).

Tex.App.—Fort Worth 2002. Even if undisclosed evidence regarding possibility of other child molesters living in or visiting victim's residence was exculpatory, such evidence was not "material," such as would have made different outcome reasonably probable, as required to support claim of alleged *Brady* violation, in trial for aggravated kidnapping of six-year-old; evidence would only have benefitted defendant by suggesting possibility of different abductor, which possibility was pursued by defense counsel on cross-examination of state's witnesses. U.S.C.A. Const.Amend. 14.—*Franks v. State*, 90 S.W.3d 771, rehearing overruled, and rehearing overruled.—Crim Law 700(3).

Tex.App.—Austin 2000. Evidence is "material," for purposes of determining whether state's failure to disclose evidence favorable to accused violated accused's due process rights, if there is a reasonable probability that, had the evidence been disclosed to the defense, the outcome of the proceeding would have been different or confidence in the outcome of the trial would be undermined. U.S.C.A. Const. Amend. 14.—*Scaggs v. State*, 18 S.W.3d 277, rehearing overruled, and petition for discretionary review refused.—Const Law 268(5).

Tex.App.—Austin 1997. Attorney's denial of use of loan proceeds from former law partner to purchase home affected partner's action to establish equitable lien on home, and was thus "material" within meaning of rule prohibiting attorney from knowingly making false statement of material fact to tribunal. Disciplinary Procedure Rule 3.03(a)(1).—*Diaz v. Commission for Lawyer Discipline*, 953 S.W.2d 435.—Att'y & C 42.

Tex.App.—Austin 1997. Evidence is "material" under *Brady* if there is reasonable probability that, had evidence been disclosed to defense, outcome of proceeding would have been different or confidence in outcome of trial would be undermined.—*Riley v. State*, 953 S.W.2d 354, rehearing overruled, and petition for discretionary review refused.—Crim Law 700(2.1).

Tex.App.—Austin 1991. Additional evidence to be presented on remand to administrative agency is "material," and warrants remand, if it could affect agency's decision. *Vernon's Ann.Texas Civ.St. art. 6252-13a, § 19(d)(2)*.—*Smith Motor Sales, Inc. v. Texas Motor Vehicle Com'n*, 809 S.W.2d 268, writ denied.—Admin Law 819.

Tex.App.—San Antonio 1995. Suppression by the prosecution of evidence favorable to an accused violates the Fourteenth Amendment due process clause if the evidence is material to guilt or punishment; in this context, evidence is "material" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different, and "reasonable probability" is a probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 14.—*Vega v. State*, 898 S.W.2d 359,

rehearing overruled, and petition for discretionary review refused.—Const Law 268(5).

Tex.App.—San Antonio 1990. Generally, modification of lease required to be in writing must also be in writing; however, if oral modification is not "material," i.e., if character or value of underlying agreement is unaltered, modification is enforceable. V.T.C.A., Bus. & C. § 26.01(b)(5); V.T.C.A., Property Code § 5.021.—*Kerrville HRH, Inc. v. City of Kerrville*, 803 S.W.2d 377, writ denied.—Frds St of 131(1).

Tex.App.—Dallas 2003. For purposes of claim under Texas Security Act (TSA), an omission or misrepresentation is "material" if there is substantial likelihood that reasonable investor would consider it important in deciding to invest. *Vernon's Ann.Texas Civ.St. art. 581-33, subd. A(2)*.—*Geodyne Energy Income Production Partnership I-E v. Newton Corp.*, 97 S.W.3d 779.—Sec Reg 278.

Tex.App.—Dallas 1992. Lost original exhibits that cannot be suitably replaced are "material" to great weight and preponderance of evidence points on appeal and warrant new trial; lost exhibits prevent appellant from making proper presentation of points that require consideration of entire record. Rules App.Proc., Rule 50(d, e).—*Adams v. Transportation Ins. Co.*, 845 S.W.2d 323.—App & E 1177(9).

Tex.App.—Dallas 1988. Evidence is "material," for purposes of determining whether the State violated defendant's due process rights by suppressing evidence, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceedings would have been different; reasonable probability is one sufficient to undermine confidence in outcome. U.S.C.A. Const.Amend. 5, 14.—*Richardson v. State*, 753 S.W.2d 759.—Const Law 268(5).

Tex.App.—Texarkana 2001. Evidence that personal property found in defendant's rental home was similar to property that defendant had listed in inventory forms submitted to homeowner's insurance carrier after fire at her owned-home, established that defendant's false statements regarding property lost or damaged were "material" to her insurance claim, as element of insurance fraud. V.T.C.A., Penal Code § 35.02(c)(8).—*Logan v. State*, 48 S.W.3d 296, rehearing overruled, and petition for discretionary review granted, affirmed 89 S.W.3d 619.—Insurance 3649.

Tex.App.—Texarkana 2001. Evidence withheld by a prosecutor is "material" if there is a reasonable probability that had the evidence been disclosed to the defense, the outcome of the proceeding would have been different.—*Buckley v. State*, 46 S.W.3d 333, petition for discretionary review dismissed as untimely filed.—Crim Law 700(2.1).

Tex.App.—Texarkana 1997. In fraud context, representation is "material" if it induces party to act.—*Fisher v. Yates*, 953 S.W.2d 370, rehearing overruled, review denied with per curiam opinion 988 S.W.2d 730, rehearing overruled.—Fraud 18.

Tex.App.—Texarkana 1997. Evidence supported finding that allegedly perjurious statements to grand jury were “material” to grand jury’s investigation, as required for conviction of aggravated perjury; prosecutor’s questions pertained to defendant’s activities on specific day so that prosecutor could try to determine whether murder suspect had alibi for his whereabouts on night that victim disappeared. V.T.C.A., Penal Code §§ 37.03, 37.04.—Ward v. State, 938 S.W.2d 525, rehearing overruled, and petition for discretionary review refused.—Perj 33(6).

Tex.App.—Texarkana 1992. To be “material” within meaning of securities statute, misrepresentation or omission must have influenced buyer’s actions to extent that buyer would not have entered into transaction had representation not been made. Vernon’s Ann.Texas Civ.St. art. 581.33.—Lutheran Broth. v. Kidder Peabody & Co., Inc., 829 S.W.2d 300, writ dismissed, and writ granted, and writ withdrawn, set aside 840 S.W.2d 384.—Sec Reg 278.

Tex.App.—Amarillo 1998. For purposes of state’s duty to turn over to defendant exculpatory or impeachment evidence, favorable evidence is “material” if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—State v. DeLeon, 971 S.W.2d 701, petition for discretionary review refused.—Crim Law 700(2.1), 700(4).

Tex.App.—Amarillo 1988. Evidence is “material” to guilt of accused or punishment assessed, in determining whether suppression of such evidence by prosecution violates accused’s due process requirements, only if there is a reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in outcome of proceeding. U.S.C.A. Const.Amend. 14.—Cuesta v. State, 763 S.W.2d 547.—Const Law 268(5); Crim Law 700(2.1).

Tex.App.—El Paso 1996. For purposes of proving that defendant in fraud action made material misrepresentation, “material” means that matter is important to defrauded party in making decision: material means reasonable person would attach importance to and would be induced to act on information in determining his or her choice of actions in transaction in question.—Beneficial Personnel Services of Texas, Inc. v. Rey, 927 S.W.2d 157, rehearing overruled, and writ granted, vacated 938 S.W.2d 717.—Fraud 18.

Tex.App.—El Paso 1995. For *Brady* purposes, evidence is “material” if there is reasonable probability that outcome of proceeding would have been different had evidence been disclosed to accused. U.S.C.A. Const.Amend. 14.—Johnson v. State, 901 S.W.2d 525, petition for discretionary review refused.—Crim Law 700(2.1).

Tex.App.—Waco 2000. An alleged fraudulent representation is “material” if it is important to the party to whom it is made in making a decision

regarding the particular transaction.—Burleson State Bank v. Plunkett, 27 S.W.3d 605, review denied.—Fraud 18.

Tex.App.—Waco 2000. The word “material” in the context of fraud means a reasonable person would attach importance to and would be induced to act on the information in determining his choice of actions in the transaction in question.—Burleson State Bank v. Plunkett, 27 S.W.3d 605, review denied.—Fraud 18.

Tex.App.—Tyler 2002. The word “material” in the context of fraud means a reasonable person would attach importance to and would be induced to act on the information in determining his choice of actions in the transaction in question.—Robbins v. Capozzi, 100 S.W.3d 18, rehearing overruled.—Fraud 18.

Tex.App.—Tyler 1993. Question asking venirepersons whether they or anybody close to them had ever driven dump truck or large commercial truck was not “material” for purposes of “dart out” case involving boy killed by dump truck and, thus, juror’s failure to respond did not require new trial, even though juror was dump truck driver in active Army and had been in charge of other dump truck drivers; pattern of strikes was not oriented on having driven commercial trucks, but on jurors’ problems with ability to find full range of damages or juror currently driving trucks, as venireperson who currently drove concrete truck was only driver plaintiff struck for that reason, and other drivers were either allowed to sit or were challenged for other reasons. Vernon’s Ann.Texas Rules Civ.Proc., Rule 327, subd. a; V.T.C.A., Government Code § 62.105.—Burton v. R.E. Hable Co., 852 S.W.2d 745.—New Tr 20.

Tex.App.—Corpus Christi 2000. An omission or misrepresentation is “material” if there is a substantial likelihood that proper disclosure would have been viewed by a reasonable investor as significantly altering the total mix of information made available. Vernon’s Ann.Texas Civ.St. art. 581-33(A)(2).—Duperier v. Texas State Bank, 28 S.W.3d 740, review dismissed by agreement.—Sec Reg 278.

Tex.App.—Corpus Christi 1999. In making determination of whether fact is “material,” so as to preclude summary judgment, courts rely upon the substantive law, and only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.—Zapata v. The Children’s Clinic, 997 S.W.2d 745, rehearing overruled, and review denied.—Judgm 181(2).

Tex.App.—Corpus Christi 1997. Violation of due process occurs when evidence has been suppressed and defendant establishes that suppression came after a request from the defense, that the evidence would be favorable to the defense, and that the evidence would be “material”; evidence is material if there is reasonable probability that, had it been disclosed, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.—Velasquez v. State, 941 S.W.2d 303, rehearing over-

ruled, and petition for discretionary review refused.—Const Law 268(5).

Tex.App.—Houston [14 Dist.] 2002. Testimony that could have affected the course of the proceeding is “material,” for purposes of offense of aggravated perjury, when such testimony, if believed by the finder of fact, bears directly on the credibility of the States’ witnesses; “materiality” refers to statements having some substantial potential for obstructing justice and excludes utterly trivial falsifications. V.T.C.A., Penal Code §§ 37.02–37.04.—Steen v. State, 78 S.W.3d 516, petition for discretionary review refused.—Perj 11(9).

Tex.App.—Houston [14 Dist.] 1998. False statement of fact to tribunal is “material” within meaning of disciplinary rule if a judge would attach importance to the representation and would be induced to act on it in making a ruling, and thus, rule encompasses false statements by a lawyer that might corrupt the course of litigation even if they are not outcome determinative. State Bar Rules, V.T.C.A., Government Code Title 2, Subtitle G App., Art. 10, § 9, Rules of Prof. Conduct, Rule 3.03(a)(1).—Cohn v. Commission for Lawyer Discipline, 979 S.W.2d 694, rehearing overruled.—Atty & C 42.

Tex.App.—Houston [14 Dist.] 1997. A misrepresentation is “material” if it induced the complaining party to enter into the contract, and misrepresentation may be material even if it is not the sole cause of entering into the contract, so long as the complaining party relied on the misrepresentation.—Marburger v. Seminole Pipeline Co., 957 S.W.2d 82, review denied.—Fraud 18.

Tex.App.—Houston [14 Dist.] 1992. To invoke *Brady*, accused must present evidence that prosecution suppressed or withheld evidence; this evidence would have been favorable to accused; and evidence would have been material to accused’s defense; evidence is “material” only if there is reasonable probability that, had evidence been disclosed to defense, result of proceedings would have been different.—Cruz v. State, 838 S.W.2d 682, rehearing denied, and petition for discretionary review refused.—Crim Law 700(2.1).

Tex.Civ.App.—Hous. [1 Dist.] 1967. If finding upon special issue creates fatal conflict with other findings or otherwise affects legal significance of the verdict and the judgment to be entered, the special issue is “material” and must not be ignored.—Saper v. Rodgers, 418 S.W.2d 874, ref. n.r.e.—Judgm 199(1).

Tex.Civ.App.—Fort Worth 1927. Where witness, who was asked what material plaintiff was to furnish to one driving concrete piles for bridge, stated he was to furnish complete pile driver, evidence was admissible as against objection that question was leading, where there was no objection on ground that answer was not responsive; “material” being substance of which anything is made.—Stone v. Morrison & Powers, 294 S.W. 641, writ granted, reversed 298 S.W. 538.

Tex.Civ.App.—Austin 1954. Statute providing that, if, at expiration of 30 days after presentment of valid claim for, inter alia, “material” furnished, claim has not been paid, person asserting claim may, upon recovery of judgment, also recover reasonable attorney’s fees is penal in nature and must be given strict construction, and, therefore, quoted word would not include feed and supplies sold for use on defendant’s farm. Vernon’s Ann.Civ.St. art. 2226.—Moutos v. San Saba County Peanut Growers Ass’n, 268 S.W.2d 761.—Costs 194.36.

Tex.Civ.App.—Austin 1949. Where there was a deficiency of land conveyed of more than 100 acres because of mutual mistake, purchaser was entitled to recover in equity for deficiency on ground that “deficiency” was “material” notwithstanding conveyance of 1748 acres “more or less”.—Arrott v. Smith, 225 S.W.2d 639.—Ven & Pur 343(2).

Tex.Civ.App.—Austin 1943. The adjective “building” when used to define or describe the noun “material” or “materials” as used in statute exempting from chain store tax businesses engaged exclusively in sale of lumber and building material, usually includes all materials essential to erection or construction of house or other structure used for the habitation of men or animals or for the protection or shelter of property. Vernon’s Ann.P.C. art. 1111d, § 5.—Mutual Lumber Co. v. Sheppard, 173 S.W.2d 494.—Licens 19(3).

Tex.Civ.App.—San Antonio 1917. Under Rev.St. 1911, art. 5621, and article 5623 as amended by Acts 34th Leg. c. 143 [Vernon’s Ann.Civ.St. arts. 5452, 5453], held, that one furnishing machinery and tools does not receive the benefit of contractor’s bond unless named therein; the word “material” not including such articles.—American Indemnity Co. v. Burrows Hardware Co., 191 S.W. 574.—Mech Liens 313.

Tex.Civ.App.—Beaumont 1943. Variance in describing exact manner in which injury occurred and extent thereof between claim filed with Industrial Accident Board and petition filed in suit to set aside award was not “material” so as to deprive trial court of jurisdiction where petitioner’s claims both described accident as occurring at specific time and date while working on drilling rigs and both set forth the same back injury especially where Board had prompt notice of injury and ample opportunity to investigate accident and extent of injury.—Insurors Indem. & Ins. Co. v. Brown, 172 S.W.2d 174, writ refused.—Work Comp 1889.

Tex.Civ.App.—Waco 1974. Air-conditioning and heating systems, which were installed in houses with intention that the annexations be permanent, were “fixtures incorporated into structure” of houses within statute, which provides that person or firm furnishing labor or material for construction of houses, on complying with certain statutory provisions, shall have lien on house, building, fixtures, improvements and lot and which defines word “material” as material, machinery, fixtures or tools incorporated in the work or consumed in the direct prosecution of the work. Vernon’s Ann.Civ.St. art.

5452.—Houk Air Conditioning, Inc. v. Mortgage & Trust, Inc., 517 S.W.2d 593.—Mech Liens 45.

Tex.Civ.App.—Waco 1941. Generally, any evidence which tends to prove or disprove any material fact involved in the issue or question being tried or throws light on the transaction involved is “relevant” and “material.”—Thompson v. Texas Electric Ry. Co., 155 S.W.2d 624, writ refused w.o.m.—Evid 99.

Tex.Civ.App.—Waco 1941. Generally evidence is “relevant” and “material” which tends to prove or disprove any ultimate issue made by the pleadings, or to make the proposition at issue more or less probable, or which can throw any light on the transaction involved.—Thompson v. Texas Electric Ry. Co., 155 S.W.2d 624, writ refused w.o.m.—Evid 143.

Tex.Civ.App.—Eastland 1935. Under Vernon’s Ann.Civ.St. art. 2234, granting new trial for “material” misconduct of jury, “material” has reference to nature of misconduct as tending or calculated to injure rights of parties litigant.—Williams v. Rodocker, 84 S.W.2d 556.

Tex.Civ.App.—Eastland 1929. Whether jury’s misconduct is “material,” warranting new trial, is question of law. Vernon’s Ann.Civ.St. art. 2234.—Estep v. Bratton, 24 S.W.2d 465.—App & E 842(1).

Tex.Civ.App.—Tyler 1977. Stakes, iron rods, concrete pipe and lumber for batter boards constitutes “material” as defined in statute and as used in statute providing that mechanic’s lien attaches upon the “delivery of materials.” Vernon’s Ann.Civ.St. arts. 5452, 5452, subd. 2, par. b, 5459, 5459, § 1.—Blaylock v. Dollar Inns of America, Inc., 548 S.W.2d 924, ref. n.r.e., and writ granted, modified Diversified Mortg. Investors v. Lloyd D. Blaylock General Contractor, Inc., 576 S.W.2d 794.—Mech Liens 170.

Tex.Civ.App. 1906. A claim against a railroad for furnishing coal and oil and tools was not within Sayles’ Rev.Civ.St. art. 3294 [Vernon’s Ann.Civ.St. art. 5452], giving a lien to the furnisher of “material” for the construction or repair of a railroad.—Waters-Pierce Oil Co. v. U.S. & Mexican Trust Co., 99 S.W. 212, 44 Tex.Civ.App. 397, writ refused.—R R 159(4).

Tex.Civ.App. 1903. A fire policy on the furniture, chairs, gas apparatus, pictures, paintings, instruments, appliances, and material incidental to a dental office does not cover dental books. The word “appliances” is very comprehensive in its meaning, but it has never been so broadened and expanded as to comprehend books, and the close conjunction in which it is used with the word “material” shows clearly that it has reference to mechanical appliances, in connection with which the word is generally used.—American Fire Ins. Co. v. Bell, 75 S.W. 319, 33 Tex.Civ.App. 11.

Utah 2001. Misrepresentation, by former president of administratively dissolved corporation, that he was acting in his capacity as representative of a corporate entity with respect to joint-venture agreement to transfer an interest in silver mine to trans-

feree, when in fact that corporate entity no longer existed, was a “material” misrepresentation, as element for allowing transferee to void the agreement; the misrepresentation involved the identity of a party to the agreement, and the agreement involved an ongoing relationship, including a minimum one-year employment term for the former president and for a putative third-party beneficiary, as well as development of the mine over a three-year period. Restatement (Second) of Contracts § 164(1).—Miller v. Celebration Mining Co., 29 P.3d 1231, 2001 UT 64.—Corp 617(2).

Utah 2001. The identity of the parties to a contract is, as a general rule, a “material” part of the contract, as element for allowing rescission of the contract, based on fraud. Restatement (Second) of Contracts § 164(1).—Miller v. Celebration Mining Co., 29 P.3d 1231, 2001 UT 64.—Contracts 94(2).

Utah 1999. If a defendant can show with reasonable certainty that exculpatory evidence exists which would be favorable to his defense, he has the right to have otherwise confidential records reviewed by the trial court to determine if they contain material evidence; evidence is deemed “material” where there is a reasonable probability that, had it been disclosed to the defense, the result of the proceeding would have been different, and a “reasonable probability” is a probability sufficient to undermine confidence in the outcome. Rules of Evid., Rule 506(d)(1); U.C.A.1953, 58–60–114(2)(b).—State v. Cardall, 982 P.2d 79, 1999 UT 51.—Crim Law 627.8(4).

Utah 1996. Counties’ claim that state Tax Commission could not approve revised real property assessments on taxpayer’s gas utility property, in accordance with settlement agreement between state Property Tax Division and taxpayer, since Commission allegedly had no assurances that revised assessments represented fair market value was not allegation of “material” error and, therefore, claim was properly dismissed, where counties failed to establish that assessments would have been higher or lower “but for the error.” U.C.A.1953, 59–2–1007(4).—Cache County v. Property Tax Div. of Utah State Tax Com’n, 922 P.2d 758.—Tax 488.

Utah 1994. Wife’s failure to seek out information concerning husband’s net worth was irrelevant to determination of whether husband’s nondisclosure of assets and liabilities was “material” and justified invalidation of premarital agreement.—Matter of Estate of Beesley, 883 P.2d 1343.—Hus & W 29(9).

Utah App. 1995. Criminal defendant, in order to establish violation of his constitutional right to compulsory process, must make some plausible showing that testimony of absent witness would have been both material and favorable to his defense; testimony is “material” if there reasonable probability that its presence would affect outcome of trial. U.S.C.A. Const.Amend. 6.—State v. Byrns, 911 P.2d 981, denial of habeas corpus affirmed 166 F.3d 346.—Witn 2(1).

Vt. 1998. Real estate broker's failure to disclose to house purchaser that cabinets in the garage which appeared to be fixtures actually were not was a "material" omission actionable under the Vermont Consumer Fraud Act; replacement cost of cabinets was \$2,000. 9 V.S.A. §§ 2451-2480g.—Carter v. Gugliuzzi, 716 A.2d 17, 168 Vt. 48.—Cons Prot 8.

Vt. 1989. "Material," within statute precluding recovery under life policy for material misrepresentation in application, includes any statement that would affect insurer's decision to issue policy, premium charged, amount of coverage, or risk assumed; materiality establishes nexus between misrepresentation and insurer's decision to issue policy. 8 V.S.A. § 3736.—Martell v. Universal Underwriters Life Ins. Co., 564 A.2d 584, 151 Vt. 547.—Insurance 3001.

Vt. 1978. Defective cable used for support in construction of building was not "material" within exclusion provision of "builder's risk" policy where it did not go into structure itself, but was rather "equipment" used in construction process.—City of Barre v. New Hampshire Ins. Co., 396 A.2d 121, 136 Vt. 484.—Insurance 2278(21).

Vt. 1910. Coal used by a building contractor to heat buildings, covered by specifications requiring him to provide fuel for heating while the work is going on, is "material," within the implied terms of the contract, which he is bound to furnish, and hence within the scope of his bond, required by the federal statute, Act Aug. 13, 1894, c. 280, 28 Stat. 278, 40 U.S.C.A. § 270, for the protection of persons supplying materials.—U.S. v. U.S. Fidelity & Guaranty Co., 75 A. 280, 83 Vt. 278.—U S 67(6).

Va. 1994. Exculpatory evidence is "material" and must be disclosed under *Brady* if there is a reasonable probability that outcome of proceeding would have been different had the evidence been disclosed to the defense.—Bowman v. Com., 445 S.E.2d 110, 248 Va. 130.—Crim Law 700(2.1).

Va. 1993. A representation is "material" to risk, for purposes of attempt by insurer to relieve itself of liability under policy on basis of misrepresentation by insured in application, if it would reasonably influence insurer in deciding whether to issue policy.—Time Ins. Co. v. Bishop, 425 S.E.2d 489, 245 Va. 48.—Insurance 2958.

Va. 1992. Instructing jury that school board was required to show that contractor "substantially" or "materially" breached construction contract in order to be entitled to terminate contract was reversible error in action arising from contract's termination, where contract permitted termination upon "substantial" violation of contractual provisions; term "material" was not synonymous with "substantial".—Spotsylvania County School Bd. v. Seaboard Sur. Co., 415 S.E.2d 120, 243 Va. 202, on remand Sherman Const. Corp. v. Spotsylvania County School Bd., 1992 WL 884981.—Schools 86(2).

Va. 1937. A fact is "material" to insurance risk if knowledge or ignorance thereof would naturally influence insurer in making contract at all, or in

estimating degree and character of risk, or in fixing rate of insurance.—Lawson v. Southwestern Voluntary Ass'n, 191 S.E. 648, 168 Va. 294.

Va.App. 2002. Exculpatory evidence is "material," for *Brady* purposes, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—Frontanilla v. Com., 562 S.E.2d 706, 38 Va.App. 220.—Crim Law 700(2.1).

Va.App. 1997. Exculpatory evidence is "material" under *Brady* if there is reasonable probability that outcome of proceeding would have been different had evidence been disclosed to defense.—Wilson v. Com., 487 S.E.2d 857, 25 Va.App. 263.—Crim Law 700(2.1).

Va.App. 1997. For purposes of perjury statute, testimony is "material" if it is relevant to main or collateral issue on trial. Code 1950, § 18.2-434.—Ganzie v. Com., 482 S.E.2d 863, 24 Va.App. 422, appeal from denial of habeas corpus 205 F.3d 1333.—Perj 11(2).

Va.App. 1997. Witness' testimony in penalty phase of murder trial regarding identity of persons who killed victims was "material" for purposes of perjury statute; witness' testimony, if believed, had tendency to cause jurors to doubt their verdict finding defendant guilty of murders and might have influenced recommended sentence. Code 1950, § 18.2-434.—Ganzie v. Com., 482 S.E.2d 863, 24 Va.App. 422, appeal from denial of habeas corpus 205 F.3d 1333.—Perj 11(2).

Va.App. 1993. Due process requires that prosecution produce evidence favorable to accused upon request when evidence is "material" to guilt or punishment; however, evidence is "material" only if there is reasonable probability that, had evidence been disclosed to defendant, result of proceeding would have been different. U.S.C.A. Const. Amends. 5, 14; Const. Art. 1, §§ 8, 11.—Williams v. Com., 434 S.E.2d 343, 16 Va.App. 928.—Const Law 268(5).

Va.App. 1991. Exculpatory evidence is "material" on issue of guilt or punishment, for purpose of determining whether failure to disclose requires a new trial, only if there is "reasonable probability" that, had evidence been disclosed to defense, result of proceeding would have been different; confidence in outcome of trial must be undermined for "reasonable probability" standard to be met.—Humes v. Com., 408 S.E.2d 553, 12 Va.App. 1140.—Crim Law 919(1).

Va.App. 1989. For purpose of rule that failure of prosecution to disclose exculpatory or impeachment evidence requires reversal only if evidence was "material," evidence is "material" only if there is reasonable probability that had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const. Amends. 5, 14.—MacKenzie v. Com., 380 S.E.2d 173, 8 Va. App. 236.—Crim Law 700(2.1).

Va.App. 1986. Ultimate inquiry in determining whether evidence is both "material," that is tending to prove a matter properly at issue in case, and "relevant," that is tending to establish proposition for which it is offered, is whether evidence tends to prove a proposition that is itself provable in case.—*Johnson v. Com.*, 347 S.E.2d 163, 2 Va.App. 598.—Crim Law 338(1), 382.

Wash. 2000. Elected county auditor's misrepresentation, in deposition in federal civil rights lawsuit against county and county auditor, of her years of attendance at university was not "material," and auditor therefore did not commit first degree felony perjury, where auditor's statements, which occurred during preliminary questioning regarding auditor's background, were not introduced at trial and could not have affected the course or outcome of the proceeding. West's RCWA 9A.72.010(1), 9A.72.020.—*In re Recall of Pearsall-Stipek*, 10 P.3d 1034, 141 Wash.2d 756.—Perj 11(2).

Wash. 2000. Testimony from elected county auditor in discrimination suit brought by former employee of auditor's office, in which auditor stated she had graduated from college, was not "material," and auditor therefore did not commit first degree felony perjury, even if the answer affected auditor's credibility, where it was unclear whether auditor later testified as to a material issue at trial. West's RCWA 9A.72.010(1), 9A.72.020.—*In re Recall of Pearsall-Stipek*, 10 P.3d 1034, 141 Wash.2d 756.—Perj 11(2).

Wash. 2000. Issues affecting credibility can be "material" matters, as element of perjury, if the witness testifies regarding material issues in a case. West's RCWA 9A.72.010(1), 9A.72.020.—*In re Recall of Pearsall-Stipek*, 10 P.3d 1034, 141 Wash.2d 756.—Perj 11(9).

Wash. 2000. Information is "material" if knowledge or ignorance of it would naturally influence the judgment of the insurer in issuing the policy, in estimating the degree and character of the risk, or in fixing the premium rate, for purposes of Pennsylvania law.—*Aluminum Co. of America v. Aetna Cas. & Sur. Co.*, 998 P.2d 856, 140 Wash.2d 517.—Insurance 2958, 2964.

Wash. 1993. For purposes of due process rule of disclosure of favorable and material evidence to defendant, evidence is "material" if there is reasonable probability that, had evidence been disclosed to defendant, result of proceeding would have been different. West's RCWA Const. Art. 1, § 3; U.S.C.A. Const.Amend. 14.—*State v. Knutson*, 854 P.2d 617, 121 Wash.2d 766.—Const Law 268(5).

Wash. 1992. Evidence is "material" and must be disclosed by prosecution to defendant under *Brady* rule if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*In re Rice*, 828 P.2d 1086, 118 Wash.2d 876, certiorari denied *Rice v. Washington*, 113 S.Ct. 421, 506 U.S. 958, 121 L.Ed.2d 344.—Crim Law 700(2.1).

Wash. 1965. Competent and relevant evidence is "material" when it logically tends to prove or

disprove a fact in issue, and, to be admissible, it must explain, demonstrate or have a tendency to establish or disestablish the fact with which it is sought to be connected.—*State v. Gersvold*, 406 P.2d 318, 66 Wash.2d 900.—Crim Law 382.

Wash. 1924. In an action for injuries from an automobile collision, an instruction that contributory negligence to preclude recovery must have "materially contributed to the accident," though not commendable, held not prejudicial error; "material" meaning important, more than less necessary, having influence or effect, etc., and a "material fact" being one essential to the claim or defense without which it could not be supported.—*Hansen v. Sandvik*, 222 P. 205, 128 Wash. 60.—App & E 1064.4.

Wash. 1910. Under the lien laws, generally, "material" is deemed to be something that goes into, and becomes a part of the finished structure, such as lumber, nails, glass, hardware, etc., which are necessary to the completion of a building.—*Gilbert Hunt Co. v. Parry*, 110 P. 541, 59 Wash. 646, Am. Ann. Cas. 1912B, 225.—Mech Liens 45.

Wash. 1909. The word "material," as used in a statute declaring that every person furnishing materials has a lien thereon for the same, has a well defined and understood legal significance. It is deemed to be something that goes into and becomes a part of the finished structure, such as lumber, nails, glass, hardware, and a thousand other things that might be meant, which are necessary to the completed erection of a building or structure. Webster defines the word as the substance or matter of which anything is made or may be made. The word supplied is broader than the word "materials," but it cannot by any fair construction be construed so as to include materials furnished.—*Tsutakawa v. Kumamoto*, 101 P. 869, 53 Wash. 231, modified 102 P. 766, 53 Wash. 231.

Wash. 1905. The word "material" has a well defined and understood legal significance. Under the lien laws generally "material" is deemed to be something that goes into and becomes a part of the finished structure, such as lumber, nails, glass, hardware, and a thousand other things that might be mentioned, which are necessary to the complete creation of a building. Webster's definition of "material" is "the substance or matter of which anything is made or may be made." Material has not the same significance as provisions, which is defined by Webster as a stock of food collected or stored, and Laws 1893, p. 32, c. 24, § 1, entitled "An act creating and providing for the enforcement of liens for labor and material," whereby a lien is given for provisions furnished to a contractor on a railroad, etc., is void, under Const. art. 2, § 19, providing that no bill shall embrace more than one subject, which shall be expressed in the title.—*Armour & Co. v. Western Const. Co.*, 78 P. 1106, 36 Wash. 529.

Wash.App. Div. 1 1997. Nonstandard reasonable doubt instruction, which included phrase "material evidence," satisfied due process, despite claim that jurors might have thought type of evidence required to support reasonable doubt had to be of

greater significance or consequence than that required for finding of guilt because phrase was not used elsewhere or defined; argument ignored plain meaning of word "material", which is relevant or pertinent. U.S.C.A. Const.Amend. 14.—*State v. Cervantes*, 942 P.2d 382, 87 Wash.App. 440, review denied 958 P.2d 314, 134 Wash.2d 1013.—*Const Law* 268(11); *Crim Law* 789(4).

Wash.App. Div. 1 1993. What is "material," for purpose of determining whether general partners have breached fiduciary duty to disclose material information regarding proposed amendment to limited partners, depends on specific context and knowledge and information of respective parties.—*Diamond Parking, Inc. v. Frontier Bldg. Ltd. Partnership*, 864 P.2d 954, 72 Wash.App. 314, reconsideration denied, review denied 883 P.2d 327, 124 Wash.2d 1028.—*Partners* 366.

Wash.App. Div. 1 1984. To be "material," fact must be of consequence to determination of action.—*City of Seattle v. Boulanger*, 680 P.2d 67, 37 Wash.App. 357.—*Crim Law* 382.

Wash.App. Div. 1 1984. "Material," within meaning of statute prohibiting possession of controlled substances and defining controlled substances as including any "material" containing any quantity of psilocybin, means "consisting of matter." West's RCWA 69.50.101(d), 69.50.204(d)(18), 69.50.401(a).—*State v. Patterson*, 679 P.2d 416, 37 Wash.App. 275, review denied 103 Wash.2d 1005.—*Controlled Subs* 9.

Wash.App. Div. 1 1973. To preclude summary judgment, facts shown must be "material," that is, facts upon which the outcome of the litigation depends, and mere argumentative assertions are insufficient. CR 56.—*Blakely v. Housing Authority of King County*, 505 P.2d 151, 8 Wash.App. 204, review denied 82 Wash.2d 1003.—*Judgm* 181(2).

Wash.App. Div. 2 1996. General objective of remand hearing to determine materiality of recanted testimony is to determine whether recantation merits new trial; however, more specific question is whether recantation evidence is "material," that is, would it probably cause trier of fact at new trial to reach different outcome.—*State v. Smith*, 909 P.2d 1335, 80 Wash.App. 462, review granted 919 P.2d 600, 129 Wash.2d 1019, reversed 930 P.2d 917, 131 Wash.2d 258.—*Crim Law* 1181.5(3.1).

Wash.App. Div. 2 1970. Any competent evidence which logically tends to prove a defendant's connection with a crime is "material."—*State v. Ranicke*, 479 P.2d 135, 3 Wash.App. 892.—*Crim Law* 382.

Wash.App. Div. 2 1970. Any competent evidence tending logically to prove defendant's connection with a crime is "material."—*State v. Whalon*, 464 P.2d 730, 1 Wash.App. 785, review denied 78 Wash.2d 992.—*Crim Law* 382.

Wash.App. Div. 3 1993. "Material" fact, precluding summary judgment, is one upon which outcome of litigation depends in whole or in part. CR 56(c).—*Adams v. Johnston*, 860 P.2d 423, 71 Wash. App. 599, amended on denial of reconsideration

869 P.2d 416, review denied 881 P.2d 253, 124 Wash.2d 1020, appeal after remand 100 Wash.App. 1025, review denied 11 P.3d 824, 141 Wash.2d 1028.—*Judgm* 181(2).

W.Va. 1998. Prosecution's failure in murder prosecution to disclose its plea agreement with critical prosecution witness was "material" to impeachment, thus requiring habeas relief; witness was sole source of testimony that defendant argued with victim, called him "rat," pointed to grave, and said that was where victim ought to be, and witness incriminated himself in his testimony, thereby enhancing his credibility.—*State ex rel. Yeager v. Trent*, 510 S.E.2d 790, 203 W.Va. 716.—*Crim Law* 700(4); *Hab Corp* 480.

W.Va. 1997. Opposing half of trialworthy issue is present, and thus creates genuine issue for summary judgment purposes, where nonmoving party can point to one or more disputed "material" facts, that is, facts that have capacity to sway outcome of litigation under applicable law. Rules Civ.Proc., Rule 56(c).—*Fayette County Nat. Bank v. Lilly*, 484 S.E.2d 232, 199 W.Va. 349.—*Judgm* 181(2).

W.Va. 1992. Allegedly missing page from list of property that had been stolen from defendant's employer was not "material" within meaning of prosecutor's obligation to disclose material exculpatory evidence; witness who prepared list testified that he "thought" there was an additional page and it was not reasonably probable that missing page would have affected jury's decision to convict defendant of grand larceny.—*State v. Kerns*, 420 S.E.2d 891, 187 W.Va. 620.—*Crim Law* 700(3).

W.Va. 1989. In order for misrepresentation to be "material" within meaning of insurance statute on effect of misleading policy application, misrepresentation must relate to either acceptance of risk insured or to hazards assumed by insurer; materiality is determined by whether insurer in good faith would either not have issued policy, would not have issued policy in as large an amount, or would not have provided coverage with respect to hazard resulting in the loss if true facts had been disclosed to insurer as required by application or otherwise. Code, 33-6-7(b, c).—*Powell v. Time Ins. Co.*, 382 S.E.2d 342, 181 W.Va. 289.—*Insurance* 2958.

Wis. 1998. For a breach of contract to be "material," so as to excuse the nonbreaching party's performance, it must be so serious as to destroy the essential object of the agreement.—*Ranes v. American Family Mut. Ins. Co.*, 580 N.W.2d 197, 219 Wis.2d 49.—*Contracts* 318.

Wis. 1984. In prosecution for operating motor vehicle while under influence of intoxicants, defendant was not denied due process by State's failure to preserve breathalyzer test ampoule, since ampoule, had it been preserved, could not have been retested or reexamined in manner that would provide relevant evidence either in respect to accuracy of original test or to guilt or innocence of defendant, and thus, was not "material" evidence of defendant's guilt or innocence; overruling *State v. Booth*, 98 Wis.2d 20, 295 N.W.2d 194, and *State v. Raduege*, 100 Wis.2d 27, 301 N.W.2d 259. U.S.C.A.

Const.Amends. 5, 14; W.S.A. 346.63(1).—State v. Walstad, 351 N.W.2d 469, 119 Wis.2d 483.—Const Law 268(5).

Wis. 1959. Requirement that false statement or testimony given by insured must be “material” in order to breach co-operation condition of automobile liability policy means that such statement or testimony must be material to the issue of liability of insurer on its policy, but such materiality is deemed to be broader in scope than mere prejudice to insurer.—Kurz v. Collins, 95 N.W.2d 365, 6 Wis.2d 538.—Insurance 3207.

Wis. 1900. In a statute giving a lien to any one who performs any work or labor or furnishes any material in digging or constructing a well, the word “material” does not include a machine which plaintiff rented to the contractor, and which was used by such contractor in boring a well. When plaintiff hired the machine to the contractor, to all intents and purposes it became the latter’s machine, and the renting of such machine to the contractor was not furnishing material for such well.—McAuliffe v. Jorgenson, 82 N.W. 706, 107 Wis. 132.

Wis. 1890. Lubricating oil sold to be and actually used on mill machinery is not “material,” within the purview of Sanb. & B.Ann.St. § 3314 as amended which provides, inter alia, that every person who, as principal contractor, architect, etc., furnishes any materials in or about the erection, construction, protection, or removal of any machinery, erected or constructed so as to be or become a part of the freehold, shall have a lien for such materials.—Standard Oil Co. v. Lane, 44 N.W. 644, 75 Wis. 636, 7 L.R.A. 191.—Mech Liens 47.

Wis.App. 2002. Evidence favorable to a defendant is “material,” so as to give rise to duty on part of prosecutor to disclose such evidence, only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—State v. Chu, 643 N.W.2d 878, 253 Wis.2d 666, 2002 WI App 98, review denied 648 N.W.2d 478, 254 Wis.2d 263, 2002 WI 109, certiorari denied 123 S.Ct. 443, 154 L.Ed.2d 332.—Crim Law 700(2.1).

Wis.App. 1997. Evidence is “material,” and may be obtained by defendant through postconviction discovery, only if there is a reasonable probability, or probability sufficient to undermine confidence in the outcome, that, had evidence been disclosed to defense, result of proceeding would have been different.—State v. O’Brien, 572 N.W.2d 870, 214 Wis.2d 328, review granted 580 N.W.2d 688, 217 Wis.2d 517, affirmed 588 N.W.2d 8, 223 Wis.2d 303, reconsideration denied 591 N.W.2d 846, 225 Wis.2d 247, reconsideration denied 594 N.W.2d 386, 225 Wis.2d 493.—Crim Law 1590.

Wis.App. 1995. What makes testimony “material” for purposes of perjury is fact that trial court could have relied on testimony in rendering decision, and in making determination of whether testimony is material, Court of Appeals looks at whether statements are material to any of various ways in which defendant could be found guilty. W.S.A. 946.31(1).—State v. Munz, 541 N.W.2d 821, 198

Wis.2d 379, review denied 549 N.W.2d 733, 201 Wis.2d 437.—Perj 11(2).

Wis.App. 1991. Representation is “material,” for purposes of intentional misrepresentation claim, if reasonable person would attach importance to existence of matter or if maker knows or has reason to know that recipient regards it as important.—Radford v. J.J.B. Enterprises, Ltd., 472 N.W.2d 790, 163 Wis.2d 534, review dismissed 471 N.W.2d 511, review denied 474 N.W.2d 106.—Fraud 18.

Wis.App. 1985. Proof of a “material” or “substantial” impairment in defendant’s ability to drive is not a requirement for convicting a person of driving under the influence. W.S.A. 346.63(1).—State v. Waalen, 371 N.W.2d 401, 125 Wis.2d 272, review granted 378 N.W.2d 291, 126 Wis.2d 517, affirmed 386 N.W.2d 47, 130 Wis.2d 18.—Autos 332.

Wyo. 2003. A fact is “material” for summary judgment purposes if it establishes or refutes an essential element of a claim or defense.—Polo Ranch Co. v. City of Cheyenne, 61 P.3d 1255, 2003 WY 15.—Judgm 181(2).

Wyo. 2002. For purposes of establishing a *Brady* violation, evidence is “material” if its suppression undermines confidence in the outcome of the trial.—Davis v. State, 47 P.3d 981, 2002 WY 88.—Crim Law 700(2.1).

Wyo. 1996. Prosecutor’s failure to disclose evidence that is both favorable to accused and “material” either to guilt or punishment requires reversal of conviction; evidence is material only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14.—Kerns v. State, 920 P.2d 632, appeal from denial of habeas corpus 221 F.3d 1352, certiorari denied 121 S.Ct. 812, 531 U.S. 1091, 148 L.Ed.2d 697.—Crim Law 700(2.1).

Wyo. 1996. Fact is “material” for purposes of summary judgment, if it establishes or refutes essential element of claim or defense.—Safecard Services, Inc. v. Halmos, 912 P.2d 1132, rehearing denied.—Judgm 181(2).

Wyo. 1995. Issue of fact is “material” for purposes of summary judgment if it has capacity to establish or refute essential element of claim or defense thereto. Rules Civ.Proc., Rule 56(c).—Verschoor v. Mountain West Farm Bureau Mut. Ins. Co., 907 P.2d 1293.—Judgm 181(2).

Wyo. 1995. “Material” evidence, required to remand to hearing officer to take additional evidence, is such evidence as is offered to help prove proposition which is matter in issue.—Matter of Harris, 900 P.2d 1163, appeal after remand State ex rel. Wyoming Workers’ Compensation Div. v. Harris, 931 P.2d 255.—Admin Law 817.1.

Wyo. 1994. Fact is “material,” and will preclude summary judgment, if it would establish one of the essential elements of cause of action or defense asserted by either party. Rules Civ.Proc., Rule

56(c).—*Feather v. State Farm Fire and Cas.*, 872 P.2d 1177.—Judgm 181(2).

Wyo. 1992. For purposes of summary judgment, fact is “material” only if it serves to establish or refute element of legal theory upon which case is decided.—*Racicky v. Simon*, 831 P.2d 241.—Judgm 181(2).

Wyo. 1991. A fact is “material,” for purposes of defeating summary judgment, if proof of that fact would have effect of establishing or refuting one of essential elements of claim or defense asserted by party.—*Popejoy v. Steinle*, 820 P.2d 545.—Judgm 181(2).

Wyo. 1979. For purposes of ruling on motion for summary judgment, fact is “material” if proof of that fact would have effect of establishing one of the essential elements of the cause of action asserted.—*Laird v. Laird*, 597 P.2d 463.—Judgm 181(2).

Wyo. 1975. A fact is “material” and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of a cause of action or defense asserted by the parties, and would necessarily affect application of appropriate principle of law to the rights and obligations of the parties.—*Johnson v. Soulis*, 542 P.2d 867.—Judgm 181(2).

Wyo. 1950. No variance between an allegation and proof is “material” unless it actually misleads adverse party to his prejudice in maintaining his action or defense, and when a variance is immaterial court may direct fact to be found according to evidence without a formal amendment to pleadings. W.C.S.1945, §§ 3-3201, 3-3203.—*Johnston v. Vukelic*, 213 P.2d 925, 67 Wyo. 1.—Plead 388.

MATERIAL ABANDONMENT

Utah App. 1990. For priority of mechanics’ lien to relate back to commencement of work, work must be performed without “material abandonment”; question is primarily one of notice, with construction project being considered materially abandoned when reasonable observer of site would be on notice that persons who performed work apparently did not intend to continue it to completion. U.C.A.1953, 38–1–5.—*Nu-Trend Elec., Inc. v. Deseret Federal Sav. and Loan Ass’n, Inc.*, 786 P.2d 1369.—Mech Liens 173.

Utah App. 1990. Evidence supported finding, for purpose of determining whether priority of mechanics’ liens related back to earlier work, that cessation of earlier work on interior of condominium units for period of more than two years constituted “material abandonment.” U.C.A.1953, 38–1–5.—*Nu-Trend Elec., Inc. v. Deseret Federal Sav. and Loan Ass’n, Inc.*, 786 P.2d 1369.—Mech Liens 173.

MATERIAL ACTS OF MISCONDUCT

Tex.App.—Tyler 1982. Statement by jurors to other jurors concerning their receipt and use of subsistence allowances similar to allowance workers’ compensation claimant received constituted “material acts of misconduct” such as could entitle

claimant to new trial. *Vernon’s Ann.Rules Civ. Proc.*, Rule 327; *Vernon’s Ann.Civ.St.* art. 8309, § 1b.—*Hatton v. Highlands Ins. Co.*, 631 S.W.2d 787.—Work Comp 1727.

MATERIAL ADVERSE ACTION

C.A.1 (Mass.) 2002. Loss of supervisory authority because of decrease in absolute number of respective subordinates as result of office restructuring and shift in research focus was not “material adverse action” in retaliation for supervisors’ filing of sex discrimination claim; neither supervisor saw a significant change in overall job responsibilities or a decrease in salary. Civil Rights Act of 1964, § 704(a), as amended, 42 U.S.C.A. § 2000e–3(a).—*Gu v. Boston Police Dept.*, 312 F.3d 6.—Mast & S 30(6.10).

MATERIAL ADVERSE CHANGE

C.A.6 (Tenn.) 2002. Employee must identify a materially adverse change in the terms and conditions of his employment to state a claim for retaliation under Title VII; “material adverse change” includes a termination in employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation, and importantly, a change in employment conditions must be more disruptive than a mere inconvenience or an alteration of job responsibility. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e–3(a).—*White v. Burlington Northern & Santa Fe Ry. Co.*, 310 F.3d 443, 2002 Fed.App. 391P, rehearing granted, vacated 321 F.3d 1203.—Mast & S 30(6.10).

E.D.N.Y. 1996. “Material adverse change” in terms and conditions of employment, which gives rise to § 1981 claim, is one that has attendant negative result, a deprivation of position or opportunity. 42 U.S.C.A. § 1981.—*Campbell v. Grayline Air Shuttle, Inc.*, 930 F.Supp. 794.—Civil R 142.

S.D.N.Y. 1999. “Material adverse change” in terms and conditions of employment, such as would give rise to ADA claim, is one that has an attendant negative result such as a deprivation of a position or an opportunity; change in the terms and conditions of employment must be more disruptive than a mere inconvenience or an alteration of job responsibilities. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Valentine v. Standard & Poor’s*, 50 F.Supp.2d 262, affirmed 205 F.3d 1327.—Civil R 173.1.

MATERIAL ADVERSITY

Bkrcty.N.D.Ill. 1990. For purpose of determining whether creditor may vote for candidate for trustee, “material adversity” of creditor to other creditors is measured by effect on creditor body as a whole, particularly by whether challenged creditor’s interest is such that it would tend to minimize distributions to other creditors from estate. Bankr. Code, 11 U.S.C.A. § 702(a)(2).—*In re Klein*, 110 B.R. 862, affirmed in part, reversed in part 119

B.R. 971, appeal dismissed 940 F.2d 1075.—Bankr 3004.1.

MATERIAL AID

Vt. 1992. Requirement for issuance of nontestimonial identification order that procedure will be of “material aid” to investigation does not require virtual certainty that test results will be material; rather, threshold for probative value of the test is very low and evidence to be gained from the test must only “aid” in determining the material issue. Rules Crim.Proc., Rule 41.1(c)(3).—State v. Towne, 615 A.2d 484, 158 Vt. 607.—Searches 78.

MATERIAL ALLEGATION

Cal. 2001. Because a defendant’s objection to venue will obligate the People to establish by a preponderance of the evidence that venue is proper, any allegation regarding venue contained in an accusatory pleading is a “material allegation,” within meaning of statute under which a plea of not guilty puts in issue every material allegation of the accusatory pleading; however, this does not mean that the entry of a not guilty plea is sufficient in itself to constitute a specific objection to venue, as will preclude forfeiture of such an objection. West’s Ann.Cal.Penal Code § 1019.—People v. Simon, 25 P.3d 598, 108 Cal.Rptr.2d 385, 25 Cal.4th 1082.—Crim Law 145.

Ky. 1917. Under Ky.St. § 212, providing that defendant may plead the sale or purchase of any pretended title in violation of section 210 in bar, when champerty is pleaded in ejectment, it becomes a “material allegation,” within Civ.Code Prac. §§ 126, 127, and must be traversed, although defendant may take advantage of champerty without pleading it.—Reynolds v. Binion, 197 S.W. 641, 177 Ky. 189.—Plead 182.

Ky. 1904. Civ.Code Prac. § 126, provides that every material allegation of a pleading must be taken as true, unless specifically traversed; and section 127 defines a “material allegation” as one necessary for the statement or support of a cause of action or defense. *Held*, that since an allegation in a petition that deceased was in the exercise of ordinary care when he was killed was not material to the statement of a cause of action, contributory negligence being a matter of defense, an allegation of contributory negligence in the answer was new matter, which was admitted by failure to traverse by a reply.—Louisville & N.R. Co. v. Paynter’s Adm’r, 82 S.W. 412, 26 Ky.L.Rptr. 761.—Neglig 1535.

Mass. 1985. Water lien is not a “tax,” and thus fact that taxpayer stated in his petition for tax abatement that payment of real estate taxes included water lien was not a “material allegation” so as to be deemed admitted for purpose of Appellate Tax Board’s determination as to whether total taxes had been paid, thereby conferring jurisdiction on the Board to consider taxpayer’s abatement petition. M.G.L.A. c. 59, § 64.—Belair Const. Co., Inc. v. Board of Assessors of Quincy, 473 N.E.2d 185, 393 Mass. 1007.—Tax 483.

N.M. 1916. The value of the thing converted is a “material allegation,” within Code 1915, § 4143, providing that every material allegation, not controverted by the answer, shall be taken as true.—Bruton v. Sakariason, 155 P. 725, 21 N.M. 438.—Plead 129(2).

N.M. 1916. Value of the thing converted is a “material allegation” in a case of trover and conversion; hence, where alleged, and not denied, no proof of value is required.—Bruton v. Sakariason, 155 P. 725, 21 N.M. 438.—Trover 34(2).

MATERIAL ALLEGATIONS

Ky. 1934. In action in equity to quiet title, plaintiff’s allegations of ownership and actual possession are “material allegations” which must be accepted as true unless specifically traversed. Ky. St. § 11; Civ.Code Prac. § 126.—Flinn v. Blake-man, 71 S.W.2d 961, 254 Ky. 416.—Plead 129(2).

Ky. 1917. Under Civ.Code Prac. § 126, providing that all material allegations against infants must be proven, though untraversed, section 127, defining “material allegations” to be those necessary to support the cause of action, and section 429, requiring a petition for sale of infant’s property to show the personalty is insufficient, the insufficiency of the personal property must affirmatively appear.—Luscher v. Julian’s Adm’r, 190 S.W. 692, 173 Ky. 150.

MATERIAL ALTERATION

C.A.Fed. 2001. The general test of whether there is a “material alteration” of a trademark is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition, consequently, if republication is required, it indicates a material alteration; to avoid material alteration, the new form must create the impression of being essentially the same mark.—In re Thrifty, Inc., 274 F.3d 1349.—Trade Reg 212.

C.A.9 (Ariz.) 1972. Extension agreement, which was entered into by mortgagee and then owner of property who had assumed payment of mortgage, and which showed there was no release of original debt and substitution of new, did not constitute either “novation” or a “material alteration” so that it discharged comakers, who claimed to have become sureties, from their liability.—United Am. Life Ins. Co. v. Perillo, 462 F.2d 254, certiorari denied 93 S.Ct. 442, 409 U.S. 1008, 34 L.Ed.2d 301.—Bills & N 140; Nova 4.

C.A.7 (Ill.) 1989. Indemnification clause added to written confirmation of oral purchase agreement for adhesives was “material alteration” of parties’ agreement concerning adhesives to be used by buyer for conversion of standard automotive vans to recreational vehicles, even though indemnification clause was added to 12 separate purchase order confirmations; indemnification clause clearly imposed unreasonable hardship upon seller which should not be enforced without evidence of mutual assent to that term. Ill.S.H.A. ch. 26, ¶¶ 1–205,

2-207 comment.—*Trans-Aire Intern., Inc. v. Northern Adhesive Co., Inc.*, 882 F.2d 1254.—Sales 22(4).

C.A.7 (Ind.) 1984. Limestone buyer's specific delivery requirement in acceptance of offer to sell was a "material alteration" of the contract and, thus, there was no express agreement as to shipping rate; under those circumstances, it was not a contract breach for seller, in accordance with course of dealing and trade usage in the industry, to ship at a lesser rate than that demanded by buyer, particularly where project still was completed by deadline. IC 26-1-2-307, 26-1-2-309 (1982 Ed.); U.C.C. §§ 2-307, 2-307 note.—*Luedtke Engineering Co., Inc. v. Indiana Limestone Co., Inc.*, 740 F.2d 598.—Sales 22(4), 81(2).

C.A.5 (Tex.) 1999. There is no "material alteration" of legal relationship between parties, of kind sufficient for plaintiff to qualify as "prevailing party" and to obtain award of attorney fees, until plaintiff becomes entitled to enforce judgment, consent decree, or settlement against defendant.—*Foreman v. Dallas County, Tex.*, 193 F.3d 314, certiorari denied 120 S.Ct. 1673, 529 U.S. 1067, 146 L.Ed.2d 482.—*Fed Civ Proc* 2737.1.

C.C.A.6 (Mich.) 1941. A construction of life policy which would in effect insert the words "before the death of insured" after beneficiary's name, in provision that in event of beneficiary's death her share would be payable to insured's children, would constitute a "material alteration" which court is not authorized to make.—*Northwestern Mut. Life Ins. Co. of Milwaukee, Wis. v. Fink*, 118 F.2d 761.—*Insurance* 3485.

C.C.A.8 (Mo.) 1928. Changing name of payee without makers' consent is "material alteration," avoiding note in hands of holder in due course (*Negotiable Instruments Law* Mo. Sec. 125). Changing the name of the payee in a note after execution, where without the consent of the maker, is a "material alteration," which avoids the note, even in the hands of a holder in due course, under *Negotiable Instruments Law* Mo. Sec. 125 (*Rev. St. Mo.* 1919, Sec. 911).—*Clapper v. Gamble*, 28 F.2d 755.—*Alt of Inst* 3.

D.Conn. 1998. Student achieved a "material alteration" in the legal relationship between himself and school board by obtaining an enforceable order that enabled him to receive services, modifications and supplements not previously made available to him by the board, as was required as part of showing for award of attorney fees on his Individuals with Disabilities Education Act (IDEA) claim. Individuals with Disabilities Education Act, § 615(e)(4)(B), as amended, 20 U.S.C.A. § 1415(e)(4)(B).—*D.H. By and Through H. v. Ashford Bd. of Educ.*, 1 F.Supp.2d 154.—*Schools* 155.5(5).

N.D.Ga. 1992. Even if seller's confirmation documents sent to buyer were not the contracts of sale, arbitration provisions therein would still bind the buyer, as they were not a "material alteration" of the buyer's offer. O.C.G.A. § 11-2-207(2)(b).—*Dixie Aluminum Products Co., Inc. v. Mitsubishi Intern. Corp.*, 785 F.Supp. 157.—Sales 22(4).

D.Kan. 1979. Office worker's substitution of her own name for that of original payee was "material alteration" within Uniform Commercial Code definition. K.S.A. 84-3-407, 84-3-407(1), 84-4-104(i), 84-4-401, 84-4-401(1).—*Hanover Ins. Companies v. Brotherhood State Bank*, 482 F.Supp. 501.—*Alt of Inst* 3.

D.Mass. 1993. Damages limitations clause in seller's invoices was "material alteration" of parties' sales contract for purposes of Uniform Commercial Code (UCC) provision making proposals for additional terms part of contract if there has been no objection by buyer and if they do not materially alter existing terms. M.G.L.A. c. 106, § 2-207(2).—*Winter Panèl Corp. v. Reichhold Chemicals, Inc.*, 823 F.Supp. 963.—Sales 22(4).

E.D.Mo. 1993. "Material alteration" in contract of guaranty, such as will discharge guarantor, is one that changes the liability.—*Spackler v. Boatmen's Nat. Bank*, 165 B.R. 267, affirmed *In re Spackler*, 17 F.3d 1089.—*Guar* 53(1).

W.D.Mo. 1988. Alteration of check which adds alternative payee is "material alteration" as term is used in Uniform Commercial Code. V.A.M.S. § 400.3-407.—*Garnac Grain Co., Inc. v. Boatmen's Bank & Trust Co. of Kansas City*, 694 F.Supp. 1389.—*Alt of Inst* 5(2).

S.D.N.Y. 1993. Term is considered "material alteration" if its inclusion in contract would result in surprise or hardship if incorporated without express awareness by other party. N.Y.McKinney's Uniform Commercial Code § 2-207 comment.—*Hatzlachh Supply Inc. v. Moishe's Electronics, Inc.*, 828 F.Supp. 178, vacated 848 F.Supp. 25, affirmed 50 F.3d 4.—Sales 22(3).

E.D.Pa. 1940. Under New Jersey law, a payment by general contractor to subcontractor before it becomes due, or in an amount larger than provided for in contract, is such a "material alteration" of contract as to release sureties on subcontractor's bond.—*Anthony P. Miller, Inc. v. Needham*, 35 F.Supp. 332.—*Princ & S* 117.

D.Utah 1995. Parties are "prevailing parties," for purposes of award of attorney fees in civil rights action if they succeed on any significant issue in litigation which achieves some of the benefit the party sought in bringing the suit; touchstone to, and precondition of, prevailing party status is the "material alteration" of the legal relationship of the parties, and once plaintiff becomes entitled to enforce settlement against defendant, material alteration of legal relationship between the parties occurs. 42 U.S.C.A. § 1988.—*David C. v. Leavitt*, 900 F.Supp. 1547.—*Civil R* 296.

Bkrtyc.M.D.Fla. 1995. "Material alteration" of lease, such as may serve to discharge guarantors of lessee's obligations, is one which occurs when agreement is made between lessor and lessee changing term of lease, or time for payment of rent or, in some cases, amount of rent payable.—*In re Clements*, 185 B.R. 895.—*Guar* 53(1).

Bkrtyc.S.D.N.Y. 1994. In deciding whether additional term included in seller's acceptance of offer

to purchase "materially alters" parties' agreement, so as not be included therein, court should not conclude that, simply because parties are litigating over term, it most likely resulted in "material alteration."—*In re Chateaugay Corp.*, 162 B.R. 949.—Sales 23(4).

Ark. 1907. The altering of the figures in two places in an order for money, to make it read \$38 instead of \$30, but leaving the written amount as it originally was, was a "material alteration," tending to indicate that it was the maker's intention to pay \$38, and was therefore apparently capable of effecting a fraud.—*White v. State*, 102 S.W. 715, 83 Ark. 36.

Cal. 1978. The raising of a check is a "material alteration" under Uniform Commercial Code section establishing warranty against "material alteration." (Per Mosk, J., with one Justice concurring and one Justice concurring in result.) West's Ann. Com.Code, § 3407(1).—*Sun 'n Sand, Inc. v. United California Bank*, 582 P.2d 920, 148 Cal.Rptr. 329, 21 Cal.3d 671.—Banks 149.

Cal. 1932. Unauthorized alteration of mortgage, placing property for first time under mortgage lien, held "material alteration", relieving mortgagor of all liability. Civ.Code, § 1700.—*California Savings & Commercial Bank v. Wheeler*, 16 P.2d 737, 216 Cal. 742.—Alt of Inst 5(1), 17.

Cal.App. 1 Dist. 1990. Waiver signed by taxpayer constituted "material alteration" to written guaranty of sales and use tax liability which could operate to exonerate surety under statute which provides complete defense for surety when principal obligation is materially altered without consent of surety; waiver suspended taxpayer's rights and remedies against State Board of Equalization and allowed Board to collect taxes that would have otherwise been barred if strict time limitations set out in Revenue and Taxation Code were enforced. West's Ann.Cal.Rev. & T.Code § 6487; West's Ann.Cal.Civ.Code § 2819.—*State Bd. of Equalization v. Carleton*, 273 Cal.Rptr. 436, 223 Cal.App.3d 1607.—Princ & S 115(1).

Cal.App. 2 Dist. 1966. Under rule that when there is material alteration of the principal obligation, irrespective of whether it is prejudicial the surety is discharged, a "material alteration" is one that works a change in the meaning or legal effect of the contract. West's Ann.Civ.Code, § 2819.—*Verdugo Highlands, Inc. v. Security Ins. Co. of New Haven*, 49 Cal.Rptr. 736, 240 Cal.App.2d 527.—Princ & S 97.

Cal.App. 2 Dist. 1935. Amendment of deed of trust by providing for loan from beneficiaries to trustor for payment of delinquent taxes to be secured by lien on trust property prior to trust deed held "material alteration" exonerating guarantor on deed of trust note, notwithstanding clause which authorized trustee to take prior lien for loan of its funds to trust, where deed of trust required that subordination lien be given for other indebtedness subsequently incurred. Civ.Code, § 2819.—*McMannus v. Temple Estate Co.*, 51 P.2d 1124, 10 Cal.App.2d 419.—Guar 54.

Cal.App. 4 Dist. 1940. Under statute, where property settlement contract provided for a subsequent payment by husband and separate receipt therefor which was to be part of contract, and wife received money and sent copy of receipt to husband who allegedly erased a statement written thereon by wife and added statement that all bonds and money received by wife under the contract were to remain property of husband, such statement was not a "material alteration" of, so as to void, the original contract. Civ.Code, § 1700.—*Barr v. Ferris*, 107 P.2d 269, 41 Cal.App.2d 527.—Alt of Inst 9.

Cal.App. 4 Dist. 1940. Under statute, where husband allegedly altered copy of receipt executed by wife in acknowledgment of payment by husband under property settlement contract which provided that the receipt should be part of the contract, but receipt had been executed in duplicate and other copy was retained by wife, the alteration, if any, of the copy was not a "material alteration" of, so as to void, the receipt or the original contract of which receipt was a part. Civ.Code, §§ 1700, 1701.—*Barr v. Ferris*, 107 P.2d 269, 41 Cal.App.2d 527.—Alt of Inst 9.

Colo.App. 1982. Proposal for addition to sales contract, making payment for goods contingent upon successful testing and acceptance by third party, would have been "material alteration" of contract, and, since provision was not expressly agreed to by seller, provision did not become part of contract and seller was not bound by it. C.R.S. 1973, 4-2-207(2)(b), 4-2-207 comment.—*Flight Systems, Inc. v. Elgood-Mayo Corp.*, 660 P.2d 909.—Sales 22(4).

Fla.App. 4 Dist. 1978. Rent reduction, made by lessor in order to rent premises and thereby mitigate damages to guarantors was not material one which would operate to detriment of guarantors and therefore did not operate as release of guarantors; to be "material alteration" in context used, it was necessary that change operate to detriment of guarantors.—*Rizzi v. Service Development Corp.*, 354 So.2d 898.—Guar 53(1).

Fla.App. 4 Dist. 1971. Where screen enclosures were defined in declaration of condominiums as being "limited common elements," substitution of glass jalousies for wire screening in screen enclosures of condominium complex constituted "material alteration" in violation of statute forbidding material alteration to common elements except in manner provided in declaration of condominiums, and condominium unit owners were required to remove the glass jalousies and restore the screen enclosures or obtain consent of managing corporation to such change. F.S.A. § 711.13.—*Sterling Village Condominium, Inc. v. Breitenbach*, 251 So.2d 685, certiorari denied 254 So.2d 789.—Condo 11; Estates 1.

Ga.App. 1942. Either the addition of the name of an official witness to a note or the addition of the name of a party is a "material alteration" within meaning of statute providing that any alteration which changes the number or relations of the parties or any change or addition which alters the

effect of the note in any respect, is a material alteration. Code, § 14-907.—*Williams v. F. S. Royster Guano Co.*, 21 S.E.2d 349, 67 Ga.App. 711.—Alt of Inst 3.

Ga.App. 1941. Where membership certificate issued by fraternal benefit association provided for payment of endowment in cash to member upon certain contingencies or for payment of face amount of certificate to beneficiary upon death of member, subsequent by-laws or resolutions of association increasing the death benefits and taking away the endowment privilege were not binding on member, since they constituted a "material alteration" of the insurance contract which was not authorized by statute. Code 1933, § 56-1610.—*Unity Life Ins. Co. v. Beasley*, 13 S.E.2d 32, 64 Ga.App. 277.—Insurance 1848.

Ga.App. 1933. Alteration of chattel mortgage note by addition of names of two attesting witnesses held "material alteration" avoiding note as to payee, regardless whether made with fraudulent intent, or whether beneficial or detrimental to promisor (Laws 1924, p. 151, § 125).—*Cook v. Parks*, 169 S.E. 208, 46 Ga.App. 749.—Alt of Inst 8.

Ga.App. 1933. Addition of names of attesting witnesses, held "material alteration" avoiding chattel mortgage note as to payee, especially where one additional witness was notary public, whose attestation authorized record of instrument (Laws 1924, p. 151, § 125; Civ.Code 1910, §§ 3257, 3261, 4210, 5833).—*Cook v. Parks*, 169 S.E. 208, 46 Ga.App. 749.—Alt of Inst 8.

Ga.App. 1919. An alteration in an instrument, to constitute forgery, must be of a material part thereof; and a "material alteration" of an instrument is one which makes it speak a language different in legal effect from that which it originally spoke, or which carries with it some change in the rights, interests, or obligations of the parties to the writing.—*McIntosh v. State*, 98 S.E. 555, 23 Ga. App. 513.

Ill. 1949. Where a written executory contract has, by a party thereto without consent of other party, been altered from its condition when signed and delivered, alteration, if a "material alteration", that is, if it so changes its terms as to give it a different legal effect from what it originally had, renders contract void and destroys it as a basis of recovery, either in its altered form or in its original condition, by party making the alteration.—*Cities Service Oil Co. v. Viering*, 89 N.E.2d 392, 404 Ill. 538, 13 A.L.R.2d 1448.—Alt of Inst 18, 23.

Ill. 1944. Insertion of a clause providing for termination of oil and gas lease for five years or so long as oil and gas are produced in paying quantities if well is not commenced on adjoining property within 60 days constituted a "material alteration" which invalidated lease as respects one of several tenants in common who executed lease before alteration was made without her knowledge or consent, even though inserted clause was subsequently eliminated by striking it out.—*Ruwaldt v. W. C. McBride, Inc.*, 57 N.E.2d 863, 388 Ill. 285, 155 A.L.R. 1209.—Alt of Inst 5(1), 14.

Ill. 1944. Any alteration of a written instrument which so changes its terms as to give it a different legal effect from what it originally had and thus work some change in rights, obligations, interests, or relations of the parties is a "material alteration" and renders instrument void, regardless of whether alteration was by interlineation, substitution, change of words or erasures, or by deleting some material provision of instrument.—*Ruwaldt v. W. C. McBride, Inc.*, 57 N.E.2d 863, 388 Ill. 285, 155 A.L.R. 1209.—Alt of Inst 2.

Ill. 1944. Alteration of oil and gas lease by striking out provision for termination of lease unless a well was commenced on adjoining property within 60 days would constitute a "material alteration".—*Ruwaldt v. W. C. McBride, Inc.*, 57 N.E.2d 863, 388 Ill. 285, 155 A.L.R. 1209.—Alt of Inst 2.

Ill. 1940. Where real estate dealer, if his testimony were true, became custodian of a deed to be delivered upon receipt of a certain price, and original grantee refused to accept conveyance, if name of another grantee were substituted by dealer without authority, the substitution would constitute a "material alteration" and render the deed invalid, or if the name were erased so as to make the deed blank as to a grantee and deed was then filled in by a third person without authority, deed would be void.—*Tucker v. Kanatzar*, 25 N.E.2d 823, 373 Ill. 162.—Alt of Inst 3.

Ill.App. 1 Dist. 1937. Indorsement of \$1,000 on note, at time of execution made by person representing indorser, who was primary borrower, because amount payee could lend was \$1,000 less than intended when note was made out, was not "material alteration" or a "fraudulent alteration" and it did not affect rights of such indorser. S.H.A. ch. 98, §§ 145, 146.—*Gawzner v. Rosenbaum*, 9 N.E.2d 485, 291 Ill.App. 609.—Alt of Inst 9.

Ind. 1942. The obliteration of cognovit provision in mortgage note which was executed in Illinois, where cognovit provision was valid, was not "material alteration" rendering note unenforceable, even if cognovit provision was not separate and independent from note, where cognovit provision was invalid in Indiana, and note would be enforced in Indiana only if cognovit provision was not relied upon. Burns' Ann.St. §§ 2-2904 to 2-2906.—*Paulausky v. Polish Roman Catholic Union of America*, 39 N.E.2d 440, 219 Ind. 441.—Alt of Inst 5(2).

Ind.App. 1996. "Material alteration" of underlying obligation by principal and obligee which will effect discharge of guarantor of obligation must be change which alters legal identity of principal's contract, substantially increases risk of loss to guarantor, or places guarantor in different position; in addition, change must be binding.—*Yin v. Society Nat. Bank Indiana*, 665 N.E.2d 58, rehearing denied, transfer denied 683 N.E.2d 581.—Guar 53(1).

Ind.App. 1942. Where official of payee bank, after note was delivered, placed the figures 65 under the figures 600 in the upper lefthand corner of note and drew a line underneath and placed underneath the line the figures 535, but made no change in the words "six hundred dollars" in the

body of the note as the principal thereof, the change was not a "material alteration" so as to avoid the note within statute defining such alteration as an alteration changing the sum payable. Burns' Ann.St. §§ 19-901, 19-902.—Franklin Nat. Bank v. Kerlin, 45 N.E.2d 368, 112 Ind.App. 641.—Alt of Inst 5(2).

Ind.App. 1 Div. 1918. Changing a note after its execution so as to postpone date of payment is a "material alteration," making note unenforceable against maker, who did not consent.—Wright v. O'Brien, 119 N.E. 469, 67 Ind.App. 521.—Alt of Inst 6.

Ind.App. 2 Div. 1915. Where there was an agreement between the payee and maker of a note that all such notes should bear 6 per cent. interest after maturity, the insertion of such rate by the payee in the blank form after delivery is not a "material alteration." The insertion in an executed note of a provision for interest after maturity at the same rate as the note would draw under Burns' Ann.St.1914, § 7952, is not a material alteration, since it did not change the legal effect of the instrument.—John Kindler Co. v. First Nat. Bank, 109 N.E. 66, 61 Ind.App. 79.

Iowa 1960. Where plaintiff loaned defendant \$2,500, and defendant gave plaintiff note for \$2,500, and thereafter plaintiff allegedly loaned defendant additional \$500, and plaintiff, without knowledge or consent of defendant, added above signature of defendant on the note "Five Hundred Dollars added plus interest from September 30, 1956," there was a "material alteration" of the note so that note was void under statute, though plaintiff, in adding the words to the note, acted under impression that she had a right to do what she did. I.C.A. §§ 541.125, 541.126.—Smith v. Hough, 100 N.W.2d 906, 251 Iowa 435.—Alt of Inst 5(2).

Iowa 1959. In order to constitute a "material alteration" of negotiable instrument so as to avoid liability, the words added or erased must enlarge or add to contractual obligation of party bound by the paper, or must vary its original legal effect to the prejudice of such party. I.C.A. §§ 541.125, 541.126.—Knapp v. Knapp, 99 N.W.2d 396, 251 Iowa 44.—Alt of Inst 5(2).

Iowa 1945. Payee's notation on face of note "12/27/41. Extended to 12/1/43," was not a "material alteration" which would render note void, since notation confirmed or assumed correctness of original instrument and attempted to evidence a new agreement extending time for payment.—Wentland v. Stewart, 19 N.W.2d 661, 236 Iowa 661, 161 A.L.R. 1206.—Alt of Inst 5(2).

Iowa 1943. A "material alteration" of a written contract is a change which enlarges the contract, adds to the obligation of the party bound, or varies the original legal effect.—Consolidated Const. Co. v. Begunck, 9 N.W.2d 390, 233 Iowa 463.—Alt of Inst 2.

Iowa 1943. Where contract for material and labor was executed in duplicate, erasure on seller's copy of signature of seller's agent and substitution

of signature of another agent of seller did not constitute a "material alteration" barring seller's enforcement of contract.—Consolidated Const. Co. v. Begunck, 9 N.W.2d 390, 233 Iowa 463.—Alt of Inst 8; Equity 38.

Iowa 1940. The admitted fact that mortgagee's secretary had traced over mortgagor's signature on note and mortgage sued on, without any proof of intent thereby to perpetrate a wrong, did not constitute such a "material alteration" of the instruments as to invalidate them, or defeat foreclosure of the mortgage where such tracing did not make the instruments express a promise different from that which parties had in fact made.—United Federal Savings & Loan Ass'n of Des Moines v. La Rue, 294 N.W. 564.—Alt of Inst 2.

Iowa 1929. Unexplained appearance of another's name on note as maker, attached without original maker's consent after completion of transaction between him and payee, constitutes "material alteration" (Code 1927, §§ 9585, 9586).—Schram v. Johnson, 225 N.W. 369, 208 Iowa 222.—Alt of Inst 3.

Iowa 1915. Changing a note from one payable to the order of a named payee to one payable to bearer is a "material alteration," under Code Supp. 1907, § 3060a125.—Builders' Lime & Cement Co. v. Weimer, 151 N.W. 100, 170 Iowa 444, Am. Ann. Cas. 1917C, 1174.—Alt of Inst 3.

Kan. 1943. Where insertion placed in note after execution and delivery had been obliterated at time note was introduced in evidence and cause of action on note did not rest on the previous insertion, there was no "material alteration". Gen.St.1935, 52-907.—Willoughby v. Sheedy, 142 P.2d 799, 157 Kan. 505.—Alt of Inst 5(2).

Kan. 1934. Where note dated May 13, 1921, to become due in one year from date, was not paid, notation on face thereof "extended to May 13, 1923" held not "material alteration" which would discharge maker. Rev.St.1923, 52-907.—Stevenson v. Good, 37 P.2d 41, 140 Kan. 318.—Alt of Inst 9.

Ky. 1953. Alteration of deed which changed quantity of estate granted from fee simple to life estate with remainder over was "material alteration."—Pope v. Kirk, 255 S.W.2d 468.—Alt of Inst 2.

Ky. 1940. Where oil and gas lease, on its face, had expired for failure of lessee to drill oil well in a block consisting of specified farms before a named date, alteration of lease by insertion of name of owner of farm on which lessee had commenced drilling for oil before named date constituted a "material alteration" voiding lease.—Hoosier Drilling Co. v. Ellis, 137 S.W.2d 1084, 282 Ky. 137.—Alt of Inst 5(1).

Ky. 1934. Change of rate of interest by payee from 6% to 8% without consent of makers of notes held "material alteration" discharging makers entirely from liability, though payee could not under law, collect more than 6%. Ky.St. § 3720b-124.—Jones v. Jones, 71 S.W.2d 999, 254 Ky. 475.—Alt of Inst 5(2).

Ky. 1929. Changing due date of first installment from January 30 to February 30 constituted "material alteration". Ky.St. §§ 3720b—124, 3720—125.—Kimberley v. Penix, 18 S.W.2d 858, 230 Ky. 91.—Alt of Inst 6.

La. 1942. Where grocer refrigerator without reference to serial numbers was described in mortgage sufficiently to satisfy requirements as to description, insertion of serial numbers in mortgage by mortgagee's agent after execution thereof and before recordation was not such a "material alteration" as would vitiate mortgage.—Smith v. Bratsos, 12 So.2d 245, 202 La. 493.—Alt of Inst 5(1).

La. 1930. Extension agreement regarding mortgage notes, between mortgagees and mortgagor's grantees, who assumed debt in solidio with mortgagor, held "material alteration" avoiding note, as regards mortgagor who did not assent. Act No. 64 of 1904, §§ 124, 125, LSA-R.S. 7:124, 7:125.—Isaacs v. Van Hoose, 131 So. 845, 171 La. 676.—Alt of Inst 6.

La. 1930. That extension agreement was noted on back of mortgage notes did not prevent it from being "material alteration" discharging maker not assenting thereto. Act No. 64 of 1904, §§ 124, 125, LSA-R.S. 7:124, 7:125.—Isaacs v. Van Hoose, 131 So. 845, 171 La. 676.—Alt of Inst 6.

La. 1930. Act No. 64 of 1904, s 124, provides that where negotiable instrument is materially altered without assent of all parties thereon, it is avoided, except as against party who has himself made, authorized, or assented to alteration and subsequent indorsers, and section 125 provides that any alteration which changes time of payment or sum payable, either for principal or interest, is "material alteration."—Isaacs v. Van Hoose, 131 So. 845, 171 La. 676.—Alt of Inst 6.

La.App. 2 Cir. 1938. Changing of check by payee, with maker's consent, by erasing payee's name and amount of check, which were written in foreign language, and writing them in English, was not "material alteration" within meaning of negotiable instruments law. Act No. 64 of 1904, § 124, LSA-R.S. 7:124.—Davis v. Jordan, 185 So. 545.—Alt of Inst 5(2).

La.App. 3 Cir. 1975. Person's substitution of his name for that of another as vendee on sheriff's deed after deed had been completed was a "material alteration" of such document.—Osborn v. Johnston, 308 So.2d 464, writ issued 313 So.2d 240, affirmed 322 So.2d 112.—Alt of Inst 3.

Md. 1945. Any change in recited amount of instrument whereby it becomes a promise to pay a sum different from that originally expressed is a "material alteration."—Etgen v. Washington County Bldg. & Loan Ass'n, 41 A.2d 290, 184 Md. 412.—Alt of Inst 5(1).

Md. 1941. Any change of a recited amount in a written instrument whereby it becomes a promise to pay a sum different from that originally expressed is a "material alteration" which vitiates the instrument as to any nonconsenting party.—Markoff v. Kreiner, 23 A.2d 19, 180 Md. 150.—Alt of Inst 5(1).

Md. 1941. Whether alteration of contract for sale of apartment house, so that recited amount of partial payment was reduced \$200 and balance due raised \$200, was made with the knowledge and consent of the purchaser so that there was no "material alteration" which would vitiate the instrument, was for jury.—Markoff v. Kreiner, 23 A.2d 19, 180 Md. 150.—Alt of Inst 30.

Mass. 1941. To be a "material alteration", constituting a defense to action on note, change must be such as to change legal effect of the instrument.—Mindell v. Goldman, 35 N.E.2d 669, 309 Mass. 472.—Alt of Inst 2.

Mass. 1941. Ordinarily, addition of name of witness to a note after delivery would have effect of extending period of limitation of action thereon to 20 years after cause of action accrued, and so would be a "material alteration." G.L.(Ter.Ed.) c. 107, § 148; c. 260, § 1, subd. 3.—Mindell v. Goldman, 35 N.E.2d 669, 309 Mass. 472.—Alt of Inst 8.

Mass. 1941. Where note signed by two parties was an instrument under seal, proof of addition of name of witness thereto after delivery would not establish a "material alteration", constituting a defense to action on note, since addition of name of witness thereto would not have any legal consequence other than that already attached to it as a sealed instrument, which was of itself actionable within period of 20 years after cause of action accrued under statute. G.L.(Ter.Ed.) c. 107, § 148; c. 260, § 1, subds. 1, 3.—Mindell v. Goldman, 35 N.E.2d 669, 309 Mass. 472.—Alt of Inst 8.

Mass. 1941. Where it was alleged that note when delivered was ambiguous, in that but one party was named in body of instrument and it was signed by two persons, addition in body of note of name of other person who signed note, if made after delivery and without consent of signers, would be a "material alteration" in instrument constituting a defense to an action thereon, since it would operate to change legal position of party not named in body of instrument from that of indorser to that of a maker. G.L.(Ter.Ed.) c. 107, §§ 39(6), 147, 148(4).—Mindell v. Goldman, 35 N.E.2d 669, 309 Mass. 472.—Alt of Inst 8.

Mass. 1940. An alteration changing the amount of interest payable on notes from 5 to 6 per cent. constituted a "material alteration" which would void the notes. G.L.(Ter.Ed.) c. 107, §§ 147, 148.—Perry v. Manufacturers Nat. Bank of Lynn, 25 N.E.2d 730, 305 Mass. 368, 127 A.L.R. 339.—Alt of Inst 5(2).

Mass. 1915. Under Rev.Laws, c. 73, § 142, an alteration in a note, by adding the words "with interest at 6 per cent." was a "material alteration."—Broadway Nat. Bank of Chelsea v. Hefferman, 107 N.E. 921, 220 Mass. 247.—Alt of Inst 5(2).

Minn. 1924. The evidence sustains a finding that the words "without recourse" above an indorsement by the payee of a note were erased and the word "demand and protest waived" substituted. Such change was a "material alteration" under section 125 of the Negotiable Instruments Act,

M.S.A. § 335.481; and under section 124 it avoided the instrument except as against one making or assenting to the alteration, and subsequent indorsers, and except that a holder in due course, not a party to the alteration, can enforce payment according to the original tenor of the instrument.—*Walsham State Bank v. Tuttle*, 199 N.W. 970, 160 Minn. 250.

Miss. 1927. Holder in due course of note, materially altered by blank date of payment being filled in, can recover on it according to original tenor; "material alteration" (Negotiable Instruments Act, §§ 7, 124, 125).—*Wilson v. Stark*, 112 So. 390, 146 Miss. 498.—*Bills & N* 378.

Mo. 1991. "Material alteration" in contract of guaranty, which will discharge guarantor, exists if it changes liability.—*Royal Banks of Missouri v. Fridkin*, 819 S.W.2d 359.—*Guar* 54.

Mo. 1930. Apparent alteration of note as to interest rate was "material alteration," rendering note invalid. V.A.M.S. §§ 401.124, 401.125.—*Kircher v. Dunnington*, 29 S.W.2d 138, 325 Mo. 355.—*Alt of Inst* 5(2).

Mo. 1927. A "material alteration" is one changing terms of instrument, giving it different legal effect, and works change in rights, interests, or obligations of parties. V.A.M.S. § 401.125.—*Bank of Moberly v. Meals*, 295 S.W. 73, 316 Mo. 1158.—*Alt of Inst* 2.

Mo. 1919. Where note called for interest annually, an indorsement of payment of interest in advance without agreement as to extension of time, would not be a "material alteration," within Rev. St. 1909, § 10095, releasing those who were accommodation indorsers under section 10000, and therefore liable as indorsers only by virtue of section 10033.—*Highland Inv. Co. v. Kansas City Computing Scales Co.*, 209 S.W. 895, 277 Mo. 365.—*Bills & N* 256.

Mo.App. E.D. 1993. "Material alteration" of guaranty is one that enlarges or lessens liability; such alteration without guarantor's consent will discharge guarantor.—*Fuhrer v. Sheahan*, 857 S.W.2d 439, rehearing, transfer denied, and transfer denied.—*Guar* 53(1).

Mo.App. E.D. 1993. Creditor's agreement with debtor staying for one year execution on judgment for creditor on 30-day note was "extension of time for repayment" that was thus "material alteration" of guaranty; thus, guarantor's liability was extinguished, as alteration was granted without guarantor's knowledge or consent.—*Fuhrer v. Sheahan*, 857 S.W.2d 439, rehearing, transfer denied, and transfer denied.—*Guar* 56.

Mo.App. 1942. Where deed had reserved right of way running with the land and inuring to both vendor and purchaser, for use as a walkway only, construction of a vehicular roadway by owner of servient tenement was "material alteration" of the character of the servitude subject to injunction.—*Gerber v. Appel*, 164 S.W.2d 225, quashed in part State ex rel. *Appel v. Hughes*, 173 S.W.2d 45, 351 Mo. 488.—*Ease* 54.

Mo.App. 1940. The drawing of a line through the figures representing the original principal of a note and the placing with pen and ink the figures representing balance due on note would not constitute a "material alteration" which would justify cancellation of note, if such changes represented actual payments made on the note.—*Deicke v. Roudebush*, 138 S.W.2d 678.—*Alt of Inst* 5(2).

Mo.App. 1940. A correction of notation on note, as to balance due, so as to make note reflect the actual payments made on it would not constitute a "material alteration", which would warrant cancellation of note.—*Deicke v. Roudebush*, 138 S.W.2d 678.—*Alt of Inst* 5(2).

Mo.App. 1933. Grantee's adding of fraudulent acknowledgment to deed to right of way held "material alteration" making deed void.—*Kempf v. Phillips Pipe Line Co.*, 61 S.W.2d 422.—*Alt of Inst* 2.

Mo.App. 1927. Note is avoided by "material alteration" thereof without maker's consent. V.A.M.S. §§ 401.124, 401.125.—*May v. Steinhage*, 298 S.W. 1048.—*Alt of Inst* 20.

Mo.App. 1927. Change of date held "material alteration," rendering negotiable instrument void under Iowa Code.—*Dunbar v. Iowa State Bank*, 295 S.W. 835, 221 Mo.App. 979.—*Alt of Inst* 6.

Mo.App. 1923. Where a note expressly provided that all signers, indorsers, and parties agree to all extensions, an indorsement on the back of the note in reference to the extension of the time of payment and change in rate of interest not requiring the consent of the parties was not a "material alteration," in violation of Rev. St. 1919, §§ 910, 911, which rendered a subsequent purchaser before maturity a holder not in due course.—*Russell v. Wyant*, 253 S.W. 790, 214 Mo.App. 377.—*Bills & N* 342.

Mo.App. 1918. Addition to note of special place of payment was "material alteration" within V.A.M.S. §§ 401.124, 401.125.—*Mechanics' American Nat. Bank v. Helmbacher*, 201 S.W. 383, 199 Mo.App. 173.—*Alt of Inst* 6.

Neb. 1958. Insertion by Director of Motor Vehicles of driver's and motor vehicle license numbers in abstract of record of justice of the peace court showing conviction for speeding for which three points were assessed against licensee did not change meaning or legal effect of abstract and hence was not a "material alteration". R.S.Supp.1955, §§ 39-795, 39-7129.—*Strasser v. Ress*, 87 N.W.2d 619, 165 Neb. 858.—*Alt of Inst* 2.

Neb. 1937. Any change in personality, number, or relations of parties to a negotiable instrument which gives instrument a different legal effect is a "material alteration," as respects whether change constitutes forgery (Comp.St.1929, §§ 28-601, 62-807).—*Mitchell v. State*, 273 N.W. 806, 132 Neb. 891.—*Forg* 10.

Neb. 1935. Holder's change in time of maturity on note without maker's consent constitutes "material alteration". Comp.St.1929, §§ 62-806,

62-807.—Bank of Cedar Bluffs v. Beck, 258 N.W. 528, 128 Neb. 244, 96 A.L.R. 1099.—Alt of Inst 5(2).

Neb. 1935. Holder's placing of memorandum or notation on margin of note for holder's convenience, which notation does not affect rights or liabilities of maker, is not "material alteration". Com.St.1929, §§ 62-806, 62-807.—Bank of Cedar Bluffs v. Beck, 258 N.W. 528, 128 Neb. 244, 96 A.L.R. 1099.—Alt of Inst 9.

Neb. 1935. Bank's insertion on a note of number of note in bank's discount register and insertion of maturity date which was required by banking department rules in note payable on demand held not "material alteration" which would release maker since notation was made merely to advise bank by what date renewal demand note should be taken and did not alter maker's legal obligation. Comp. St.1929, §§ 62-806, 62-807.—Bank of Cedar Bluffs v. Beck, 258 N.W. 528, 128 Neb. 244, 96 A.L.R. 1099.—Alt of Inst 9.

Neb. 1934. Where indorsee's agent indorsed payments received a note as applying to principal, but later crossed out words showing such application so that payments might apply to interest, erasure was not "material alteration" and did not void note.—Hammond v. Frost, 256 N.W. 525, 127 Neb. 702.—Alt of Inst 5(2).

N.H. 1951. A "material alteration" of an instrument is one that changes the legal effect of an instrument.—Fitzgerald v. Lawson, 78 A.2d 527, 96 N.H. 447.—Alt of Inst 2.

N.J.Sup. 1935. Line drawn through figures which indicated amount of note on upper left-hand corner of note, above date line and promise to pay, and marking of lesser amount over old figures to show payment on principal by maker, held not to render note void because of "material alteration". 3 Comp.St.1910, p. 3749, §§ 124, 125.—People's Bank & Trust Co. v. Klughaupt, 180 A. 560, 13 N.J.Misc. 744.—Alt of Inst 5(2).

N.M. 1941. The unauthorized change in the name of a grantee in deed, conveying mineral rights, fraudulently obtained from escrow holder without complying with escrow agreement, constituted a "material alteration" of an undelivered deed and prevented the passing of good title to purchaser from grantee who lacked knowledge of invalidity of deed.—Mosley v. Magnolia Petroleum Co., 114 P.2d 740, 45 N.M. 230.—Alt of Inst 3; Ven & Pur 239(9).

N.Y. 1946. A payee's change, on heading of check, of branch bank on which check was drawn from 'Lexington' to 'Fordham' at suggestion of bank which had mistakenly credited maker's funds deposited in Lexington branch to the Fordham branch, was not a "material alteration" which would void the check, where change was made to effectuate unquestioned intention of maker to draw a check in favor of payee on her funds deposited in the bank, which was the sole debtor, no matter how many branches the bank maintained. Negotiable Instruments Law, ss 205, 206, 350.—In re Goebel's

Estate, 65 N.E.2d 174, 295 N.Y. 73, 174 A.L.R. 296.—Alt of Inst 5(2).

N.Y. 1938. Changing name of payee of check from "C.D. Blair" to "C.D. Blair & Co., Inc.," was a "material alteration" rendering check immediately void, and drawee bank was not justified in paying check notwithstanding check was certified, where check had been misappropriated and was undorsed, since company as a mere holder of misappropriated check undorsed had no claim that it could enforce. Negotiable Instruments Law, §§ 205, 206.—Sundail Const. Co. v. Liberty Bank of Buffalo, 13 N.E.2d 745, 277 N.Y. 137.—Banks 148(1).

N.Y.A.D. 1 Dept. 2000. Removal of a printing press' safety guard, which was designed to be removed with relative ease to facilitate periodic press maintenance, was not a "material alteration" of the press subsequent to its manufacture and sale, so as to cut off the liability of the manufacturer and seller for an alleged product defect.—Rios v. Rockwell Intern. Corp., 701 N.Y.S.2d 386, 268 A.D.2d 279.—Prod Liab 57.

N.Y.Sup. 1966. If note when delivered contained no provision for interest, addition of clause providing for interest would be a "material alteration" rendering note void in hands of any holder but holder in due course. Negotiable Instruments Law, §§ 91, 205, 206.—Meadow Brook Nat. Bank v. Seaboard Diecasting Corp., 276 N.Y.S.2d 822, 52 Misc.2d 922, appeal dismissed 282 N.Y.S.2d 966, 28 A.D.2d 898.—Alt of Inst 20.

N.Y.Sup. 1941. Notations written on note after execution extending time of payment from June 4, 1938, to December 4, 1938, and thereafter to June 4, 1939, constituted prima facie a change in time of payment, and hence a "material alteration" within statute defining any alteration changing time of payment as a material alteration which avoids the instrument when made without assent of parties liable. Negotiable Instruments Law, §§ 205, 206, subd. 3.—Haskell v. Lason, 31 N.Y.S.2d 729.—Alt of Inst 6.

N.Y.Sup. 1937. Where California law was applicable, in absence of California authority New York court would follow New York rule that extension of mortgage note in consideration for indorsement by mortgagor's grantees constituted "material alteration" discharging persons not consenting thereto. Civ.Code Cal. §§ 3201, 3205, 3206; Negotiable Instruments Law, §§ 201, 205, 206.—Keeler v. Templeton, 300 N.Y.S. 868, 165 Misc. 392.—Courts 95(2).

N.Y.Sup. 1937. An extension of time made after due date is nevertheless "material alteration" releasing persons not consenting thereto since there is but one instrument and a change in its due date at any time is an alteration (Civ.Code Cal. §§ 3205, 3206; Negotiable Instruments Law, §§ 205, 206).—Keeler v. Templeton, 300 N.Y.S. 868, 165 Misc. 392.—Alt of Inst 6.

N.Y.Sup.App.Term 1935. Pencil notation '\$560' placed over original figure '\$1,020,' in absence of

change in words expressing sum payable, was not "material alteration" avoiding note, and sum payable remained sum expressed in words (Negotiable Instruments Law, §§ 36, 206).—*Morris Plan Co. of New York v. Clough*, 284 N.Y.S. 714, 157 Misc. 659.—*Alt of Inst 5(2)*.

N.Y.Sup.App.Term 1918. Changing dates of checks from 1916 to 1917 constituted a "material alteration," within Negotiable Instruments Law, § 205, as to enforcement of altered instrument by holder in due course.—*Abraham v. Sabbatino*, 169 N.Y.S. 40, 102 Misc. 511.

N.Y.Co.Ct. 1929. Where bank, which discounted noninterest-bearing note for payee, required payee to agree to pay interest thereon, and made notation in red ink on note, after phrase "value received," of words "with int.," held, that such notation did not constitute a "material alteration" of note, within Negotiable Instruments Law, §§ 205, 206, so as to render it invalid, in absence of intent to defraud, and payee was therefore not precluded from suing makers thereon.—*Falvo v. Provenga*, 233 N.Y.S. 653, 133 Misc. 644.

N.Y.Mun.Ct. 1933. Drawing line through figures in upper left-hand corner of note, and insertion in pencil of different figures, held not "material alteration," where amount written in words in body of note remained unchanged (Negotiable Instruments Law, § 206, subd. 2).—*Morris Plan Co. of New York v. Epstein*, 263 N.Y.S. 454, 147 Misc. 164.—*Alt of Inst 5(2)*.

N.Y.City Ct. 1958. Changing a nonnegotiable instrument to one that is negotiable is a "material alteration" invalidating the note as against a holder in due course. Negotiable Instruments Law, §§ 91, 205, 206.—*Oltarsh v. Turf Broadway, Inc.*, 175 N.Y.S.2d 714, 12 Misc.2d 984.—*Alt of Inst 5(2)*.

N.Y.Dist.Ct. 1971. Alteration of welfare check from \$13.50 to \$313.50, prior to acceptance of payment of check by payor bank, was a "material alteration," and collecting bank was liable to payor bank on the warranty against alteration for the difference between the two sums where the check was enforceable against the county for original amount. Uniform Commercial Code, §§ 4-207(1, 2), 4-401.—*Franklin Nat. Bank v. Bank of Westbury Trust Co.*, 318 N.Y.S.2d 656, 65 Misc.2d 604.—*Banks 174*.

N.C. 1934. Payee's cancellation of certain indorser's name from note held "material alteration" rendering note void as to all parties thereto, including indorsers, except those consenting to cancellation. C.S. §§ 3106, 3107.—*Efird v. Little*, 172 S.E. 198, 205 N.C. 583.—*Alt of Inst 8*.

N.C.App. 1995. For purposes of determining whether guarantors were released from obligation by "material alteration" to original obligation, lender's advances in excess of amount agreed to, was not material deviation from original agreement upon which guaranty was based where agreement authorized, but did not require, lender to advance additional monies, so long as over advances were approved by lender.—*NationsBank of North Carolina*,

N.A. v. Brown, 455 S.E.2d 890, 118 N.C.App. 576, review withdrawn 461 S.E.2d 337, 340 N.C. 568.—*Guar 53(3)*.

N.C.App. 1990. "Loan modification agreement", which did not change terms of original loan but merely released certain property from creditor's lien in return for additional interest payment, was collateral to original note and did not "materially alter" note, within meaning of "material alteration" limitation on guarantors' liability. G.S. § 25-3-606.—*Kirkhart v. Saieed*, 389 S.E.2d 837, 98 N.C.App. 49.—*Guar 53(1)*.

N.D. 1915. The writing of the words "May 1st, 1913," as a memorandum of a promise by the holder to the principal maker of the note as to extension of the time, held not a "material alteration" within Comp. Laws 1913, § 7010.—*Eaton v. Delay*, 155 N.W. 644, 32 N.D. 328, L.R.A. 1915D,528.—*Alt of Inst 9*.

Ohio 1910. Under a statute providing that a material alteration of a negotiable instrument is one which changes the date, the sum payable, the time or place of payment, the number or relations of the parties, or the medium or currency in which payment is to be made, a valid agreement between the holder and principal debtor for an extension of time of payment is not a "material alteration" discharging an accommodation maker of a note; the statute referring to changes in the instrument itself and not the contract.—*Richards v. Market Exch. Bank Co.*, 90 N.E. 1000, 7 Ohio Law Rep. 578, 81 Ohio St. 348, 26 L.R.A.N.S. 99.

Ohio App. 5 Dist. 1928. Where holder of note indorsed in blank writes guaranty over indorsement, such writing constitutes "material alteration" releasing indorser. Gen.Code, § 8229.—*Bishop v. Deposit Banking Co.*, 171 N.E. 611, 35 Ohio App. 63, 28 Ohio Law Rep. 670.—*Alt of Inst 5(2)*, 20; *Bills & N 201*, 288; *Guar 54*.

Ohio App. 8 Dist. 1933. Assignment by highway contractor of moneys due under contract with county to materialman without surety's knowledge was "material alteration" of contract and "preference" that released surety so far as materialman's right to hold surety was concerned. Gen.Code, § 2365-3.—*U. S. Fidelity & Guaranty Co. v. Allied Products Co.*, 187 N.E. 83, 45 Ohio App. 270, 38 Ohio Law Rep. 133, 14 Ohio Law Abs. 410.—*High 113(5)*.

Okla. 1954. A "material alteration" of a deed is one which effects a change in its legal effect.—*Boys v. Long*, 268 P.2d 890, 1954 OK 96.—*Alt of Inst 2*.

Okla. 1940. The signing of chattel mortgage by purported attestation witnesses who were not present when the mortgage was executed, as required by statute, was not such a "material alteration" as would invalidate the mortgage. 46 Okl.St. Ann. § 63.—*Poage v. Nix*, 98 P.2d 610, 186 Okla. 388, 1940 OK 30.—*Alt of Inst 8*.

Okla. 1939. If parties agree that chattel mortgage is to cover only specified property, and mortgagee is given authority to include only such property in mortgage, but mortgagee thereafter inserts description of other property without mortgagee's

knowledge and consent, there is a "material alteration" within statute, destroying lien on all property described in mortgage. 15 Okl.St. Ann. § 239.—*American Nat. Bank of Wetumka v. Hightower*, 87 P.2d 311, 184 Okla. 294, 1939 OK 31.—Alt of Inst 7.

Okla. 1935. Where mortgage specifically covered "Refrigerators and Ice-Boxes," alleged alteration by addition of words "It is specifically understood that this mortgage also covers the frigidaire electric refrigeration system" installed in mortgaged premises held not "material alteration."—*Adkins v. Investors Syndicate*, 53 P.2d 540, 175 Okla. 557, 1935 OK 521.—Alt of Inst 5(1).

Okla. 1932. Increasing amount of interest by holder of note or his agent without maker's consent held "material alteration" invalidating note. 48 Okl.St. Ann. §§ 266, 267.—*Belt v. Stover*, 11 P.2d 519, 157 Okla. 176, 1932 OK 385.—Alt of Inst 5(2).

Okla. 1930. Test of "material alteration" is whether instrument will have same legal effect after alteration as before.—*Criner v. Davenport-Bethel Co.*, 289 P. 742, 144 Okla. 74, 1930 OK 314.—Alt of Inst 2.

Okla. 1930. Erasure of name inserted in deed as that of grantee and writing in of name of true grantee did not constitute "material alteration" vitiating instrument, where person originally designated had no equitable interest and his name was used inadvertently.—*Criner v. Davenport-Bethel Co.*, 289 P. 742, 144 Okla. 74, 1930 OK 314.—Alt of Inst 3.

Okla. 1918. Adding the name of a person as maker of a joint and several promissory note after delivery without knowledge or consent of original assignors is a "material alteration" and under Rev. Laws 1910, § 4175, 48 Okl.St. Ann. § 267, avoids the instrument.—*Bank of Commerce of Sulphur v. Webster*, 172 P. 942, 70 Okla. 73, 1918 OK 261, L.R.A. 1918F,696.

Okla. 1917. The detachment of a negotiable note from a contract to which it is attached by perforations, when such detachment does not make any change or addition altering effect of instrument, is not a "material alteration" under Negotiable Instruments Act, 48 Okl.St. Ann. §§ 266, 267.—*Conqueror Trust Co. v. Simmon*, 162 P. 1098, 62 Okla. 252, 1917 OK 103.—Alt of Inst 9.

Or. 1938. The addition of name of maker's wife to note, without the knowledge or consent of the maker or his wife, by some one claiming benefits of the note, after its delivery, constituted a "material alteration" in the note, and absolved the maker from liability to one who was not a holder in due course.—*Stacey v. Fritzler*, 84 P.2d 97, 160 Or. 231, 119 A.L.R. 887, rehearing denied 84 P.2d 499, 160 Or. 231, 119 A.L.R. 887.

Pa. 1948. Where second codicil of will changing executors and trustees of testator's will was the original, it was a "probable document", notwithstanding that testator, or a stranger marked such document "copy" and, hence, erasure of word "copy" and insertion of initials "RMG" was not a

"material alteration" affecting validity of the instrument.—*In re Griffith's Estate*, 57 A.2d 893, 358 Pa. 474.—Wills 107, 206.

Pa. 1942. In suit on a judgment note, alleged alteration of note consisting of an almost imperceptible erasure and slight mark under the initial of payee's name was not material so as to impose upon plaintiff the burden to explain it before the note could be received in evidence, on ground that the note showed on its face a "material alteration." 56 P.S. § 19.—*Hershberger v. Hershberger*, 29 A.2d 95, 345 Pa. 439.—Alt of Inst 24(2).

Pa. 1941. Where note in suit containing words "I promise to pay" was signed and endorsed by several makers, but lines were run through the signatures of one maker, cancelling them, the note contained a "material alteration", and proofs were required to be made on that basis, and note if valid was the joint and several obligation of makers. 56 P.S. §§ 22, 81, 276, 278.—*Miners Sav. Bank of Pittston v. Dougherty*, 20 A.2d 287, 342 Pa. 273.—Alt of Inst 8, 24(2); Bills & N 120.

Pa. 1940. The addition of a seal to a note by maker after execution, delivery, indorsement, and due date without consent of indorser constituted a "material alteration" relieving indorser from liability. 56 P.S. §§ 276, 277.—*Baumer v. Du Pont*, 12 A.2d 566, 338 Pa. 193.—Alt of Inst 8; Bills & N 256, 301.

Pa. 1938. Where original contract required magazine distributor to pay 14½ cents a copy to publisher, modification requiring distributor to pay increased price of 15 cents per copy was a "material alteration" which discharged guarantors of distributor's obligation and was not an "indulgence," composition" or "arrangement" which guaranty permitted publisher to make without diminishing guarantors' liability.—*Magazine Digest Pub. Co. v. Shade*, 199 A. 190, 330 Pa. 487, 117 A.L.R. 960.—Guar 53(3).

Pa. 1937. Notations on notes consisting of numbers and dates for convenience of record and book-keeping by bank which sought to establish claim against decedent's estate thereon did not constitute a "material alteration" invalidating the notes (56 P.S. § 276).—*In re Strickler's Estate*, 195 A. 134, 328 Pa. 145.—Alt of Inst 5(2).

Pa. 1935. Lining out of "Cambridge Trust Company" which was name of payee printed in negotiable note held not "material alteration" of instrument, so as to require payee whose name was inserted over printed name to show that lining out was made before signing, where signature of maker was not contested, "Cambridge Trust Company" did not claim to be payee, and note was in possession of payee before death of maker.—*In re Tranor's Estate*, 177 A. 820, 318 Pa. 206.—Alt of Inst 5(2).

Pa. 1935. Change made in note is not a "material alteration" until signed and delivered, since only then does note become negotiable.—*In re Tranor's Estate*, 177 A. 820, 318 Pa. 206.—Alt of Inst 10.

Pa. 1934. Drawing line through figures in upper left-hand corner of note and substitution in writing, above figures crossed out, of other figures in slightly reduced amount, held not "material alteration" avoiding instrument, where substitution was made to show balance due after part payment. 56 P.S. §§ 276-278.—Philadelphia Nat. Bank v. Buchman, 171 A. 589, 314 Pa. 343.—Alt of Inst 5(2).

Pa. 1918. The addition of a seal after one of the signatures to a promissory note, by the agent of the holder, without the knowledge or authority of the maker, is a "material alteration" which avoids the instrument.—Bowman v. Berkey, 105 A. 557, 262 Pa. 411.—Alt of Inst 8.

Pa. 1918. An agreement to pay interest on interest is a "material alteration" of a note affecting the sum payable for interest within Negotiable Instrument Act May 16, 1901, P.L. 211 § 125, 56 P.S. § 278.—Schroyer v. Thompson, 105 A. 274, 262 Pa. 282, 2 A.L.R. 1567.—Alt of Inst 5(2).

Pa. 1917. Addition, at request of maker, of name as witness to signatures of sureties to note after its execution by them and in their absence and without their knowledge or consent, was a "material alteration," discharging the sureties.—Swank v. Kaufman, 99 A. 1000, 255 Pa. 316.—Princ & S 101(2).

R.I. 2001. Price-adjustment clause in seller's original offer and included in seller's letter confirming receipt of buyer's purchase order was a "material alteration" to sales contract between merchant buyer and merchant seller, and thus was not part of contract by operation of Uniform Commercial Code (UCC) provision governing incorporation of additional or different terms, where the price differential occasioned by the clause was in excess of \$99,000, that is, approximately 10% of purchase order, and buyer did not sign or return confirmation letter. Gen.Laws 1956, § 6A-2-207(2)(b).—Stanley-Bostitch, Inc. v. Regenerative Environmental Equipment Co., Inc., 786 A.2d 1063.—Sales 23(4).

S.D. 1928. Detachment of mortgage clause rider from theft policy covering automobile after debt had been paid held not "material alteration."—Sawyer v. National Fire Ins. Co., 220 N.W. 503, 53 S.D. 228, 61 A.L.R. 306.—Alt of Inst 9.

Tex.Com.App. 1929. Addition to note after delivery, and without maker's consent, of words, "Pay \$50 per month," held "material alteration" avoiding instrument. Vernon's Ann.Civ.St. art. 5939, § 125.—Clifton Mercantile Co. of Clifton v. Gillaspie, 15 S.W.2d 607.—Alt of Inst 5(2).

Tex.App.—El Paso 1995. "Material alteration" is alteration of underlying debt that either injures or enhances risk of injury to guarantor.—Austin Hardwoods, Inc. v. Vanden Berghe, 917 S.W.2d 320, rehearing overruled, and writ denied.—Guar 53(1).

Tex.Ct.App. 1889. Any change in the personality, number, or relations of the parties to an instrument is, as a general rule, a "material alteration."—Texas Printing & Lithographing Co. v. Smith, 14 S.W. 1074, 4 Willson 22.

Tex.Civ.App.—Fort Worth 1961. Insertion in note, after makers had signed it, of statement specifying place of payment, did not constitute a "material alteration" of note avoiding makers' liability where it was executed simultaneously with mortgage providing that note was payable at such place. Vernon's Ann.Civ.St. art. 5939, § 124.—Whiddon v. General Mills, Inc., 347 S.W.2d 7.—Alt of Inst 6.

Tex.Civ.App.—Austin 1940. Where bidders for state highway construction contract stated type of equipment which they proposed to use, engineer's alteration of plans and specifications so as to require contractor to leave more trees than originally specified on the right of way, thus making use of such equipment impossible and necessitating use of more expensive methods, was a "material alteration" not authorized by contract provision empowering engineer to make changes and alterations in plans and specifications, and contractors were entitled to be compensated as for extra work, for additional labor and expense incurred.—Martin Bros. v. State, 146 S.W.2d 782, reversed 160 S.W.2d 58, 138 Tex. 505.—High 113(1).

Tex.Civ.App.—Austin 1937. Under statute avoiding a negotiable instrument materially altered without consent of parties, alteration of note which changed date of payment from one to two years was a "material alteration" which was a good defense to the note. Vernon's Ann.Civ.St. art. 5939, §§ 124, 125.—Miller v. White, 112 S.W.2d 487, dismissed.—Alt of Inst 6.

Tex.Civ.App.—Dallas 1941. Any alteration in a written instrument which does not materially change the instrument, making it read differently from its original provisions, and which does not cause the instrument to speak differently in legal effect than it spoke originally, is not a "material alteration" rendering the instrument void.—Tyler v. Bauguss, 148 S.W.2d 912, writ dismissed, correct.—Alt of Inst 2.

Tex.Civ.App.—Dallas 1941. The insertion by grantors of the clause "The intent of this contract is to convey 20 royalty acres or $\frac{1}{80}$ of production from said land", in an original deed conveying "an undivided one-tenth" of the one-eighth royalty retained by the grantors in 200 acres, was not a "material alteration", and it was not necessary to have the original deed reacknowledged.—Tyler v. Bauguss, 148 S.W.2d 912, writ dismissed, correct.—Alt of Inst 5(1).

Tex.Civ.App.—Texarkana 1942. Where record disclosed no understanding between maker and payee either before or after delivery of note, authorizing payee to alter or add to the provisions of the note after its delivery, and there was no provision in the note concerning rate of interest, alteration of note by the payee after delivery, by insertion of the figure "8" in blank space where no rate of interest was provided, without consent of the maker, constituted a "material alteration" which defeated payee's recovery on note. Vernon's Ann.Civ.St. art. 5932, § 14; art. 5939, §§ 124, 125.—Clem Lumber Co. v. Barnett, 158 S.W.2d 837.—Alt of Inst 7.

Tex.Civ.App.—Texarkana 1918. Any alteration causing the instrument to speak different in legal effect from that which is spoke originally is a “material alteration.”—Commercial Credit Co. v. Giles, 207 S.W. 596.—Alt of Inst 2.

Tex.Civ.App.—Texarkana 1918. Any material alteration of an instrument destroys its obligation and renders it unenforceable, and any alteration causing the instrument to speak differently in legal effect from that which it spoke originally is a “material alteration.”—Commercial Credit Co. v. Giles, 207 S.W. 596.—Alt of Inst 16.

Tex.Civ.App.—Amarillo 1938. The changing of maturity date of negotiable note was a “material alteration,” voiding note except as against a party who made, authorized or assented to the alteration. Vernon’s Ann.Civ.St. art. 5939, §§ 124, 125.—Copper v. Hampton, 123 S.W.2d 941, writ dismissed.—Alt of Inst 6.

Tex.Civ.App.—Amarillo 1931. Alteration in loan agreement from \$128 to \$80 by insurer without insured’s consent held “material alteration,” rendering instrument void. Vernon’s Ann.Civ.St. art. 5939.—Occidental Life Ins. Co. v. Jamora, 44 S.W.2d 808.—Alt of Inst 5(1).

Tex.Civ.App.—El Paso 1917. Changing a note to bear interest from maturity instead of from date is a “material alteration,” and, where made after signature of surety without his knowledge or consent, renders the note unenforceable as to him, notwithstanding that such alteration was favorable to the surety.—Williams v. Midland Nat. Bank, 191 S.W. 1181.

Tex.Civ.App.—Waco 1941. Where note showed on its face that it was an interest coupon note in the principal sum of \$900 representing one year’s interest at 6 per cent. on \$15,000, mere alteration of the figures “\$900” in margin by running a line through them and writing at right thereof “930”, without changing the written words in body of note, was not a “material alteration.”—Duvall v. Clark, 158 S.W.2d 565, writ refused w.o.m.—Alt of Inst 9.

Utah 1938. The scratching out by payee of the word “seven,” representing the interest rate on note, and the insertion of “Eight” above it, was a “material alteration” of the note which voided the note in the hands of the payee’s executor as against a maker who did not consent to the change, but notes remained valid as against maker who did. Rev.St.1933, 61-1-126.—Garner v. Thomas, 75 P.2d 168, 94 Utah 287, rehearing denied 78 P.2d 529, 94 Utah 295.—Alt of Inst 5(2), 20.

Utah 1938. The insertion of the penciled figure “8%” above the word “seven,” which represented the interest on notes, without scratching out the “seven,” did not constitute a “material alteration” of the notes which would void them as against a maker who did not consent to attempted change, and hence notes were valid to extent of 7 per cent. interest as against nonconsenting maker and to extent of 8 per cent. as against maker consenting to attempted change. Rev.St.1933, 61-1-126.—Garner v. Thomas, 75 P.2d 168, 94 Utah 287, rehearing

denied 78 P.2d 529, 94 Utah 295.—Alt of Inst 5(2), 20.

Vt. 1965. A “material alteration” within Negotiable Instruments Act is one which makes the instrument speak a different language in legal effect from what it originally spoke; an alteration which produces some change in the rights, interests, and obligations of the parties to the instrument. 9 V.S.A. §§ 576, 577.—Griffin v. Griffin, 217 A.2d 400, 125 Vt. 425.—Alt of Inst 2.

Vt. 1923. Adding the words “with interest” to a demand note, when the note does not bear interest from date, is a “material alteration,” within G.L. 2993, 2994.—Grapes v. Rocque, 119 A. 420, 96 Vt. 286.—Alt of Inst 5(2).

Vt. 1917. A renewal note having a blank line before the words “after date” was delivered, but the old note was not surrendered because the payee was told that the note was given to prevent protest of the old one, but that if it was desired to run the note through the books of the payee bank the blank could be filled in. A few days short of four months after the note was given the cashier inserted the words “four months” in the blank, canceled the old note, and entered the new one in its stead on the books of the bank. Held, that the insertion of the words in the blank was not a “material alteration,” rendering the note unenforceable, in view of Negotiable Instruments Act, Laws 1912, No. 99, § 14, providing that if the instrument is wanting in any material particular, the person in possession thereof has prima facie authority to complete it by filling in the blanks therein; the term “material particular,” as used, not meaning such as may be necessary to make the instrument a negotiable note, but including any particular proper to be inserted.—Howard Nat. Bank v. Arbuckle, 102 A. 477, 92 Vt. 86.

Va. 1932. Detachment of note from memorandum qualifying its terms of itself constitutes “material alteration.”—Whaley Bros. v. Stevens, 165 S.E. 645, 159 Va. 388.—Alt of Inst 9.

Wash. 1933. Alteration of numbering on stolen bonds, negotiable in form and payable to bearer, held not “material alteration” precluding recovery of purchase price. Rem.Comp.Stat. § 3515.—Hellar v. National City Co. of California, 18 P.2d 480, 171 Wash. 585.—Alt of Inst 5(2).

Wash. 1913. Under Rem. & Bal.Code, § 3514, providing that a note which has been materially altered is void as against all who did not consent to the alteration, and section 3515, providing that a change in the sum payable, or other change which alters the effect of the instrument, is a material alteration, the reduction of the amount of a note from \$15,000 to \$11,000 by indorsement upon the back thereof before delivery of a payment of \$4,000 is a “material alteration,” which relieves an accommodation maker of liability on the note, even though it was an alteration which benefited, instead of injured, him.—Washington Finance Corp. v. Glass, 134 P. 480, 74 Wash. 653, 46 L.R.A.N.S. 1043.

Wash. 1912. Under Rem. & Bal.Code, § 3514, providing that, where a negotiable instrument is materially altered without the assent of all persons liable thereon, it is avoided, except as against a party who made, authorized, or assented to the alteration and subsequent indorsers, and section 3515, providing that an alteration which changes the number or relations of the parties is a "material alteration," where, after the indorsement of a note by an accommodation party, and before it was negotiated, without his knowledge or consent, other parties signed it as maker, he was discharged of liability thereon.—*Handsaker v. Pedersen*, 128 P. 230, 71 Wash. 218.

Wash. 1910. Under a statute providing that any alteration changing the date or any change which alters the effect of a negotiable instrument is a "material alteration," the drawing of a hand through the figures "1-8-9" in a note written on a blank form, dated October 24, 1892, payable one year from date, reciting that it was due October 24, 1903, and writing above the figures "1-9-0" so as to make the date October 24, 1902, was not a "material alteration," since, as the written figures control the printed ones, the alteration did not change the date.—*Lombardo v. Lombardini*, 106 P. 907, 57 Wash. 352, 32 L.R.A.N.S. 515.

W.Va. 1932. Forging name of additional maker on note by payee or by some one for whose conduct payee is responsible, without maker's knowledge, held "material alteration" (Code 1923, c. 98A, § 124).—*Morrison v. Harmon*, 164 S.E. 145, 112 W.Va. 280.—Alt of Inst 8.

Wis. 1935. Insertion of schedule of payments which were required to be made by automobile dealer in a conditional sales contract after buyer had signed contract was not a "material alteration" so as to invalidate contract in hands of assignee who did not know of alteration at time of assignment. St.1933, § 260.14.—*Norman F. Thiex, Inc. v. General Motors Acceptance Corp.*, 259 N.W. 855, 218 Wis. 14.—Alt of Inst 7.

Wis. 1935. Where person intending to enter into a contract delivers a writing containing blanks evidently meant to be filled in, receiver has implied authority to complete instrument by filling blanks in the way apparently contemplated by the maker, with matter in general conformity to character of writing so as not to make contract void because of a "material alteration."—*Norman F. Thiex, Inc. v. General Motors Acceptance Corp.*, 259 N.W. 855, 218 Wis. 14.—Contracts 39.

Wis. 1934. Unauthorized detachment of note providing for judgment by cognovit thereon from conditional sales contract would be a "material alteration" which would render note nonnegotiable, preclude cognovit judgment, and discharge entire instrument. St.1933, § 270.69.—*Shawano Finance Corp. v. Julius*, 254 N.W. 355, 214 Wis. 637.—Alt of Inst 9.

MATERIAL ALTERATION OF A DOCUMENT

Ill.App.1 Dist. 1979. "Material alteration of a document" is a change in its language, whether by

interlineation or otherwise which, if enforced, would have a legal effect different from the original language.—*Citizens Nat. Bank of Downers Grove v. Morman*, 34 Ill.Dec. 374, 398 N.E.2d 49, 78 Ill. App.3d 1037.—Alt of Inst 2.

MATERIAL ALTERATION OF CONTRACT

Wis.App. 1985. An attempt on buyer's part to impose consequential liability on seller when seller has initially disclaimed such liability is a "material alteration of contract" and does not become part of the contract on being included in the acceptance. W.S.A. 402.207(2)(b).—*Phillips Petroleum Co. v. Bucyrus-Erie Co.*, 373 N.W.2d 65, 125 Wis.2d 418, review granted 378 N.W.2d 291, 126 Wis.2d 517, reversed 388 N.W.2d 584, 131 Wis.2d 21, reconsideration denied 394 N.W.2d 313, 132 Wis.2d 393.—Sales 22(4).

MATERIAL ALTERATION OF THE CONTRACT

Ohio 1938. An assignment by a contractor, of the proceeds of a public improvement contract, for value received, without the knowledge or consent of a compensated surety, does not constitute a "material alteration of the contract" sufficient to work a discharge of the surety from its obligation under the bond. Gen.Code, § 2365-1 et seq.—*Van Wert Nat. Bank v. Roos*, 17 N.E.2d 651, 134 Ohio St. 359, 12 O.O. 511.—Princ & S 102.

MATERIAL ALTERATION OR ADDITION

Fla.App.3 Dist. 1981. As applied to changes in common elements held by owners of condominium, the term "material alteration or addition" means to palpably or perceptively vary or change the form, shape, elements or specifications of a building from its original design, plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance.—*Tower House Condominium, Inc. v. Millman*, 410 So.2d 926, approved and remanded 475 So.2d 674.—Condo 11.

Fla.App.4 Dist. 1971. As applied to buildings, the term "material alteration or addition" means to palpably or perceptively vary or change the form, shape, elements or specifications of a building from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance.—*Sterling Village Condominium, Inc. v. Breitenbach*, 251 So.2d 685, certiorari denied 254 So.2d 789.—Estates 1.

MATERIAL ALTERATION OR CHANGE IN SUBJECT PROPERTY

Vt. 1984. There is "material alteration or change in subject property" within meaning of statute governing fixing of real estate appraisal by Board of Appraisers upon appeal, when such alleged alteration or change is relevant and of consequence to the valuation of the property. 32 V.S.A. § 4468.—*Shetland Properties, Inc. v. Town of Poultney*, 484 A.2d 929, 145 Vt. 189.—Tax 362.5.

MATERIAL ALTERATIONS

D.Mass. 1992. Chemical supplier's disclaimer of liability for consequential and incidental damages, contained in order acknowledgment forms sent to manufacturer after supplies of cadmium had been shipped, were "material alterations" to contract formed when supplier shipped cadmium, and thus were excluded from agreement; provisions that limit remedies available to buyer alter distribution of risk among the parties, and can impose substantial economic hardship on buyer. U.C.C. § 2-207(2)(b); M.G.L.A. c. 106, § 2-207(2)(b).—*Glyptal Inc. v. Engelhard Corp.*, 801 F.Supp. 887.—Sales 23(4).

Ark. 1993. Time extensions are not "material alterations" in guaranty if they are expressly provided for in guaranty.—*Smith v. Elder*, 849 S.W.2d 513, 312 Ark. 384.—Guar 56.

La.App.2 Cir. 1946. Where note contained a promise to pay corporation a specified amount as a compromise settlement, and maker admitted his signature and acknowledged indebtedness in the specified amount, the alleged addition or retracing of the word and figures "Amount \$110.00" in upper left-hand corner of instrument, the alleged retracing or addition of "Winn" in the name of Winnfield, the addition of the date, and the addition of words relating to payment of interest were not "material alterations" which would avoid obligation to pay.—*Dyer & Co. v. Ferguson*, 25 So.2d 92.—Alt of Inst 5(2).

R.I. 2001. For purposes of Uniform Commercial Code provision governing incorporation of additional or different terms in a contract between merchants, "material alterations" are those that result in surprise or hardship if incorporated without express awareness by the other party. Gen. Laws 1956, § 6A-2-207(2)(b).—*Stanley-Bostitch, Inc. v. Regenerative Environmental Equipment Co., Inc.*, 786 A.2d 1063.—Sales 22(4), 23(4).

Tex.Civ.App.—Beaumont 1929. Changes in specifications of subcontract after cancellation and reletting which did not increase ultimate cost held not to constitute "material alterations" so as to discharge original subcontractor's surety.—*American Const. Co. v. Lassig*, 20 S.W.2d 797, writ granted, reversed *Southern Sur. Co. v. American Const. Co.*, 36 S.W.2d 212.—Princ & S 100(1).

W.Va. 1994. While there was handwritten change in building ordinance number in minutes of meeting at which ordinance was finally adopted, there were no "material alterations" in actual amendment to ordinance and, thus, amendment was properly enacted. Code, 8-11-4.—*Harrison v. Town of Eleanor*, 447 S.E.2d 546, 191 W.Va. 611.—Zoning 199.

MATERIAL AMENDMENT

Alaska 1984. Under bylaw of incorporated association of condominium owners requiring 100% approval of mortgage holders before any "material amendment" to the bylaws could take effect, repeal of bylaw allowing pet ownership, although "material

amendment" to the bylaws from unit owners' perspective, was not "material amendment" from mortgage holders' perspective.—*Carroll v. El Dorado Estates Div. Number Two Ass'n, Inc.*, 680 P.2d 1158.—Condo 7.

Ga.App. 1965. "Material amendment", within rule that demurrer to original petition does not cover it as to material amendment, is one which materially aids and strengthens cause of action.—*Purdy v. Norrell*, 142 S.E.2d 311, 111 Ga.App. 546.—Plead 254.

Ga.App. 1960. Where original petition seeking recovery on note alleged date of note, total amount due under note, monthly payments, payees, maker, assignment by one of the payees of his interest to assignee, and what that payee's interest was in the note, and that such note was past due, and amendment of petition set forth copy of note and copy of assignment of interest of one of the payees therein to the assignee, and otherwise added nothing to the original petition, the amendment was not a "material amendment," and it was not necessary for maker of note to renew general demurrer to petition as amended.—*Hodson v. Scoggins*, 115 S.E.2d 715, 102 Ga.App. 44.—Bills & N 487.

MATERIAL ANCILLARY PROCEEDINGS

N.Y.A.D. 3 Dept. 2002. For purposes of defendant's right to be present during trial of indictment, including every ancillary proceeding that is material stage of trial, "material ancillary proceedings" are those at which defendant's presence could have a substantial effect on his or her ability to defend against the charges, and defendant's presence is substantially and materially related to the ability to defend when defendant can potentially contribute to the proceeding under scrutiny, or when defendant's presence could be useful in ensuring a more reliable determination of a particular proceeding. McKinney's CPL § 260.20.—*People v. Horan*, 737 N.Y.S.2d 145, 290 A.D.2d 880, leave to appeal denied 744 N.Y.S.2d 767, 98 N.Y.2d 638, 771 N.E.2d 840.—Crim Law 636(1).

MATERIAL AND ECONOMICALLY SIGNIFICANT CLAUSE

C.A.3 (Pa.) 1990. Provision of lease of retail space authorizing landlord or Chapter 11 debtor to terminate lease if debtor did not achieve stated average sales was "material and economically significant clause" in lease, and thus, such clause would be enforceable in bankruptcy context, even if leased space were not in a shopping center; rent received under percentage rent clause was determined by debtor's sales. Bankr.Code, 11 U.S.C.A. § 365.—*In re Joshua Slocum Ltd.*, 922 F.2d 1081, 117 A.L.R. Fed. 725, rehearing denied.—Bankr 3109.

MATERIAL AND LABOR

Ohio App.1 Dist. 1927. Claim for rental and moving concrete mixer did not support lien for "material and labor". Mechanics' Lien Law.—*Cincinnati Quarries Co. v. Hess*, 162 N.E. 686, 28 Ohio

App. 340, 6 Ohio Law Abs. 319.—Mech Liens 35, 50; Mun Corp 373(2).

MATERIAL AND NECESSARY

N.Y. 2000. Matter that is “material and necessary” in the prosecution or defense of a civil action, and therefore generally discoverable, includes any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity, and the test is one of usefulness and reason. McKinney’s CPLR 3101(a).—Andon ex rel. Andon v. 302-304 Mott Street Associates, 709 N.Y.S.2d 873, 94 N.Y.2d 740, 731 N.E.2d 589.—Pretrial Proc 31.

N.Y.A.D. 1 Dept. 1997. For discovery purposes, term “material and necessary” is generally accorded a liberal construction.—Nanbar Realty Corp. v. Pater Realty Co., 661 N.Y.S.2d 216, 242 A.D.2d 208.—Pretrial Proc 31.

N.Y.A.D. 1 Dept. 1981. “Material and necessary,” as used in statute concerning information which is material and necessary to defense of action, are to be interpreted liberally to require disclosure of any facts which will assist good-faith preparation for trial. CPLR 3101.—Johnson v. National Railroad Passenger Corp., 442 N.Y.S.2d 526, 83 A.D.2d 916.—Pretrial Proc 31.

N.Y.A.D. 1 Dept. 1976. Terms “material and necessary” as used in rule governing depositions of nonparty witnesses are to be liberally interpreted so as to require disclosure, upon request, of any facts which would assist preparation for trial by sharpening the issues. CPLR 3101(a).—Northwest Management Corp. v. Overlook Realty Co., 378 N.Y.S.2d 710, 51 A.D.2d 526.—Pretrial Proc 173.

N.Y.A.D. 2 Dept. 1995. “Material and necessary,” for purposes of statute providing that there shall be full disclosure of all evidence material and necessary in prosecution or defense of action, is to be interpreted liberally to require disclosure, upon request, of any facts bearing on controversy that will assist in preparation of trial by sharpening issues and reducing delay and prolixity. McKinney’s CPLR 3101(a).—Harrison v. Bayley Seton Hosp., Inc., 631 N.Y.S.2d 182, 219 A.D.2d 584, appeal after remand 668 N.Y.S.2d 912, 247 A.D.2d 513.—Pretrial Proc 31.

N.Y.A.D. 2 Dept. 1982. Medical records and reports pertaining to alleged injuries to patient and diagnosis and treatment by physician, including so-called “private records,” were obviously “material and necessary” to defense of personal injury action and, hence, were discoverable since there was no claim that they were prepared for litigation and since physician-patient privilege was waived when patient put his physical condition in issue. McKinney’s CPLR 3101.—Pizzo v. Bunora, 454 N.Y.S.2d 455, 89 A.D.2d 1013.—Pretrial Proc 382.

N.Y.A.D. 2 Dept. 1975. Term “material and necessary” within statute permitting disclosure of all evidence which is material and necessary, must be interpreted liberally to require disclosure, upon request, of any facts bearing on controversy which

will assist preparation for trial by sharpening issues and reducing delay and prolixity; test is one of usefulness and reason. CPLR 3101(a).—Braynard v. Morgan, 376 N.Y.S.2d 575, 50 A.D.2d 810.—Pretrial Proc 31.

N.Y.A.D. 2 Dept. 1973. Business records and receipts, as they pertain to issue of future earning in wrongful death action, are “material and necessary” within statute providing that there shall be full disclosure of all evidence “material and necessary” in prosecution or defense of an action. CPLR 3101.—Rollner v. Cannon, 347 N.Y.S.2d 741, 42 A.D.2d 964.—Pretrial Proc 375.

N.Y.A.D. 2 Dept. 1951. Testimony is not “material and necessary” within the discovery statute unless it relates to an issue of fact which arises from the pleadings between the parties to each other in the action. Rules of Civil Practice, rule 63; Civil Practice Act, § 288.—Johansen v. Gray, 108 N.Y.S.2d 35, 279 A.D. 108.—Pretrial Proc 173.

N.Y.A.D. 3 Dept. 1999. Whether information is “material and necessary” for discovery purposes turns upon its ability to assist preparation for trial by sharpening issues and reducing delay and prolixity; test is one of usefulness and reason.—Dolback v. Reeves, 696 N.Y.S.2d 270, 265 A.D.2d 625.—Pretrial Proc 31.

N.Y.A.D. 3 Dept. 1966. Reports to railroad of prior accidents at grade crossing where train collided with tractor and railroad’s reports of those same accidents to Public Service Commission might show existence of condition requiring repair and therefore might be deemed “material and necessary” within statute providing that there should be full disclosure of all evidence material and necessary in prosecution or defense of an action. CPLR § 3101(a).—Linton v. Lehigh Val. R. Co., 269 N.Y.S.2d 490, 25 A.D.2d 334.—Pretrial Proc 373.

N.Y.A.D. 4 Dept. 1989. Defendant’s karate manual was discoverable because plaintiff established that manual was possibly relevant to prosecution of her personal injury action, rendering manual “material and necessary” within meaning of statute providing for “full disclosure of all evidence material and necessary in the prosecution or defense of an action.” McKinney’s CPLR 3101(a).—Szafranski v. Priebe, 543 N.Y.S.2d 598, 152 A.D.2d 1003.—Pretrial Proc 371.

N.Y.A.D. 4 Dept. 1978. For purpose of rule that there shall be full disclosure of all evidence “material and necessary” in the prosecution or defense of an action, words “material and necessary” are to be interpreted liberally to require disclosure upon request of any facts bearing on the controversy that will assist preparation for trial by sharpening the issues and reducing delay and prolixity. CPLR 3124.—Johantgen v. Hobart Mfg. Co., 407 N.Y.S.2d 355, 64 A.D.2d 858.—Pretrial Proc 31.

N.Y.A.D. 4 Dept. 1975. The term “material and necessary,” as used in civil rule providing for full disclosure of all evidence material and necessary in the prosecution or defense of an action, should be

interpreted liberally to require disclosure, upon request, of any facts bearing on controversy which will assist preparation for trial by sharpening issues and reducing delay and prolixity. CPLR 3101(a)(4).—*Wolfe v. Fazzini*, 374 N.Y.S.2d 517, 50 A.D.2d 723.—*Pretrial Proc* 31, 352.

N.Y.Sup. 1983. In action alleging that motorcycle was assembled with defective rear master cylinders, depositions of defendants' employees or former employees in other lawsuits involving same alleged defect were "material and necessary" since information was reasonably calculated to lead to evidence which would be admissible, and thus, defendants would be required to make copies of such depositions available to plaintiff at reasonable cost.—*Brown v. AMF Inc.*, 478 N.Y.S.2d 743, 124 Misc.2d 964.—*Pretrial Proc* 389, 415.

N.Y.Sup. 1969. Words "material and necessary," as used in discovery statute, should be liberally applied in interest of advancing search for truth and disposition of lawsuits. CPLR 3101(a, e).—*Chase v. Patron Transmission Co.*, 304 N.Y.S.2d 866, 61 Misc.2d 200.—*Pretrial Proc* 31.

N.Y.Sup. 1956. Testimony is not "material and necessary" within statute permitting discovery by deposition unless it relates to an issue of fact which arises from pleadings between parties. Civil Practice Act, § 288.—*Casolaro v. Blau*, 158 N.Y.S.2d 589, 4 Misc.2d 206.—*Pretrial Proc* 173.

MATERIAL AND NECESSARY IN THE PROSECUTION

N.Y.Sup. 1937. Evidence on both sides of an issue raised by the pleadings can never be "material and necessary in the prosecution" of a cause of action or defense, within terms of statute authorizing examination before trial on such evidence. Civil Practice Act, § 288.—*Balsam v. Finkelstein*, 299 N.Y.S. 649, 164 Misc. 873.—*Pretrial Proc* 173.

MATERIAL AND NECESSARY IN THE PROSECUTION OF THE ACTION

N.Y.A.D. 3 Dept. 1958. In action for injuries to plaintiff struck by automobile owned and allegedly negligently operated by defendant while allegedly in employ of and as agent for corporate codefendant, defendants would be compelled to produce records of codefendant concerning social security, unemployment insurance, workmen's compensation, withholding taxes, pension, profits or bonus plans as such records were "material and necessary in the prosecution of the action" within meaning of statute as they might tend to prove whether defendant was an employee or independent contractor at date of accident, and that plaintiffs would have to prove not only employment but in addition that defendant was engaged in his employment at time he was driving the automobile did not render the items of proof desired irrelevant. Civil Practice Act, § 288.—*Guilianelle v. Brownell*, 179 N.Y.S.2d 344, 7 A.D.2d 691.—*Pretrial Proc* 378.

MATERIAL AND NECESSARY WITNESS

Mich.App. 1979. Polygraph examination of suspect, which was conducted in Michigan by a Michigan licensed polygrapher at request of suspect's attorney in course of providing legal advice and assistance to his client and which indicated that suspect confessed to murder of his wife in Delaware, was protected under polygrapher privilege statute and by attorney-client privilege; thus, inasmuch as testimony of polygrapher was barred by privilege, polygrapher was not a "material and necessary witness" within meaning of Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings. M.C.L.A. §§ 338.1728, 767.91-767.95.—*People v. Marcy*, 283 N.W.2d 754, 91 Mich.App. 399.—*Witn* 6, 184(1), 206.

MATERIAL AND RELEVANT

Mo.App. E.D. 1980. Evidence is "material and relevant" when it tends to prove fact in issue or corroborates relevant evidence bearing on principal issue.—*State v. Brown*, 604 S.W.2d 10.—*Crim Law* 338(1).

MATERIAL AND SUBSTANTIAL

E.D.N.Y. 1995. Under New York law, surgeries by insured podiatrist as substitute for another doctor in two months before filing disability claim did not make surgery "material and substantial" part of responsibilities at time podiatrist allegedly became disabled.—*Brumer v. National Life of Vermont*, 899 F.Supp. 120.—*Insurance* 2561(3).

S.D.N.Y. 1964. Under rule that to sustain action for infringement of copyright a substantial copy of the whole or a material part must be reproduced, the "material and substantial" test refers to quality and importance of copy, not merely number of items copied. 17 U.S.C.A. §§ 3, 5(a).—*PIC Design Corp. v. Sterling Precision Corp.*, 231 F.Supp. 106.—*Copyr* 57.

MATERIAL AND SUBSTANTIAL BREACH

Wis. 2002. A "material and substantial breach" of a plea agreement is a violation of the terms of the agreement that defeats the benefit for which the accused bargained.—*State v. Williams*, 637 N.W.2d 733, 249 Wis.2d 492, 2002 WI 1.—*Crim Law* 273.1(2).

Wis. 2002. Prosecutor's comments, at sentencing, on presentence investigation (PSI) report and on prosecutor's conversation with defendant's ex-wife constituted "material and substantial breach" of promise in plea agreement to recommend probationary sentence for failure to pay child support, though prosecutor purported to be affirming the agreement, to be presenting the view of report's author, who was not present at sentencing hearing, and to be previewing the ex-wife's testimony; prosecutor covertly implied that additional information available from report and from conversation with ex-wife raised doubts regarding wisdom of terms of plea agreement.—*State v. Williams*, 637 N.W.2d

733, 249 Wis.2d 492, 2002 WI 1.—Crim Law 273.1(2).

MATERIAL AND SUBSTANTIAL CHANGE IN CIRCUMSTANCES

Iowa App. 1996. Remarriage itself is not "material and substantial change in circumstances" to support a change in custody; however, substantial change may be found when circumstances surrounding remarriage adversely impact the best interests of the child.—*Dale v. Pearson*, 555 N.W.2d 243.—Child C 567.

Neb. 1991. Husband's increase in income demonstrated "material and substantial change in circumstances" and, thus, trial court abused its discretion in denying wife's application to modify alimony; property settlement agreement before trial court at time of dissolution of marriage decree stated that husband's earnings would be approximately \$120,000 per year, but husband's taxable income in one year was \$396,115, in addition to \$98,125 deferred income credited to retirement account.—*Northwall v. Northwall*, 469 N.W.2d 136, 238 Neb. 76.—Divorce 245(2).

Tex.App.—San Antonio 1997. Father failed to demonstrate "material and substantial change in circumstances" that would warrant modification of his child support obligation, even though he managed family business when divorce decree was entered, and even though he thereafter became unemployed for a time and was earning \$5 per hour when he moved for modification; even assuming that father was in fact capable of earning only \$5 per hour, he was still in possession of large amount of assets available for use in meeting his child support obligations. V.T.C.A., Family Code § 156.401(a).—In Interest of G.J.S., 940 S.W.2d 289.—Child S 256, 258.

Tex.App.—San Antonio 1997. Father failed to show "material and substantial change in circumstances" that would warrant modification of his child support obligation to amount consistent with the guidelines set forth in Family Code, even though he managed family business when divorce decree was entered, and even though he thereafter became unemployed for a time and was earning \$5 per hour when he moved for modification; even assuming that father was in fact capable of earning only \$5 per hour, he was still in possession of large amount of assets available for use in meeting his child support obligations. V.T.C.A., Family Code § 156.402.—In Interest of G.J.S., 940 S.W.2d 289.—Child S 256, 258, 356.

MATERIAL AND SUBSTANTIAL CHANGE OF CIRCUMSTANCE

Tex.Civ.App.—Dallas 1976. Decrease in husband's income from \$30,000 to \$10,000 annually, requiring him to, inter alia, dispense with services of a housekeeper to assist him in care of children, constituted a "material and substantial change of circumstance" and, as such, warranted an order requiring wife to pay child support to husband as managing conservator of children albeit claim that decrease in husband's income reflected a mere

temporary fluctuation. V.T.C.A., Family Code §§ 14.07, 14.08(c)(2).—*Labowitz v. Labowitz*, 542 S.W.2d 922.—Child S 277.

MATERIAL AND SUBSTANTIAL DUTIES

C.A.7 (Ill.) 1998. Under Illinois law, business owner and operator, who was unable to perform 65% of his former duties after hernia and knee injuries, would be unable to perform "material and substantial duties" of his regular occupation, and would be entitled to benefits under disability income policy, if there was substantial change in responsibilities, terms or conditions of his occupation.—*McFarland v. General American Life Ins. Co.*, 149 F.3d 583, appeal after remand 210 F.3d 375, on remand 2000 WL 33172972.—Insurance 2561(3).

MATERIAL AND SUBSTANTIAL EVIDENCE

N.C.App. 1974. Finding that a fact is true because the fact finder finds no reason to believe that it is not true is not supported by "material and substantial evidence." G.S. § 58-9.6(b)(5).—*State ex rel. Com'r of Ins. v. North Carolina Auto. Rate Administrative Office*, 210 S.E.2d 441, 24 N.C.App. 223, certiorari denied 211 S.E.2d 801, 286 N.C. 412, appeal after remand 227 S.E.2d 621, 30 N.C.App. 477, affirmed 241 S.E.2d 324, 294 N.C. 60.—App & E 1010.1(6).

Tenn.Ct.App. 1957. "Material and substantial evidence" is that which is material to the particular question in controversy upon the issues joined and which must necessarily enter into consideration of the controversy, and which also by itself or in connection with other testimony will be determinative of the case.—*Scott v. Atkins*, 314 S.W.2d 52, 44 Tenn.App. 353.—Evid 597.

MATERIAL AND SUBSTANTIAL IMPAIRMENT OF ACCESS

Tex.App.—Fort Worth 1995. Where property owner retains full access to one major thoroughfare, in addition to 70 feet of access to second thoroughfare, there has been no "material and substantial impairment of access," for purposes of "taking" clause of Texas Constitution. *Vernon's Ann.Texas Const. Art. 1, § 17*.—*State v. Samuels*, 917 S.W.2d 283, rehearing overruled, and writ denied.—Em Dom 106.

MATERIAL AND SUPPLIES

W.D.Wash. 1932. Purse seine ordered for fishing vessel held "material and supplies" within statute giving vessel lien on maritime. 46 U.S.C.A. § 971.—*The Paul L.*, 59 F.2d 223.—Mar Liens 25.

MATERIAL ASSISTANCE

N.Y.Sup. 1975. Words "material assistance," as used in statute providing that court may sentence person to period of probation upon felony conviction if prosecutor recommends probation on ground that such person has been or is providing material assistance, must be given plain and usual meaning and thus providing "material assistance" within pur-

view of such statute would be to aid to significant extent in investigation, apprehension or prosecution of violator of narcotic law. Penal Law 1965, §§ 65.00, subd. 1(b), 220.00 et seq.—*People v. Lofton*, 366 N.Y.S.2d 769, 81 Misc.2d 572.—Sent & Pun 1881.

MATERIAL BENEFIT RULE

D.Kan. 1994. Under Kansas law, “material benefit rule” is implied contract theory under which law deems that pecuniary benefit already received affords consideration for subsequent promise to pay for benefit.—*First Nat. Bankshares of Beloit, Inc. v. Geisel*, 853 F.Supp. 1344.—Impl & C C 34.

MATERIAL BOYCOTT

Colo. 1940. Where members of picketing union urged customers of employer operating transportation agency, or others in union of interest with the union, not to utilize such agency, it was only a “material boycott” and not a “secondary boycott” authorizing injunction. ’35 C.S.A. c. 97, § 78.—*Denver Local Union No. 13 of International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America v. Perry Truck Lines*, 101 P.2d 436, 106 Colo. 25.—Labor 843.

MATERIAL BREACH

C.A.9 1992. Although both Chapter 11 debtor and insurer had reciprocal obligations under retrospective insurance premium contract, failure of debtor to pay premiums would not relieve insurer of its obligation to perform in light of Arizona statute indicating that bankruptcy of employer does not relieve insurance carrier of workers’ compensation obligations, and thus, contract was not “executory contract” that could be rejected by debtor; even if debtor’s failure to pay premiums would otherwise be “material breach,” statute precluded insurer from stopping performance. A.R.S. § 23-963; Bankr.Code, 11 U.S.C.A. §§ 365, 365(a).—*In re Texscan Corp.*, 976 F.2d 1269.—Bankr 3106.

C.A.Fed. 1992. Determination of whether “material breach” of contract has occurred, allowing nonbreaching party to cease performance and seek remedy, depends upon nature and effect of violation in light of how particular contract was viewed, bargained for, entered into, and performed by parties.—*Stone Forest Industries, Inc. v. U.S.*, 973 F.2d 1548, rehearing denied.—Contracts 317.

C.A.9 (Cal.) 1993. Under California law “material breach” of contract required for rescission is one that is so dominant or pervasive as in any real or substantial measure to frustrate purpose of undertaking; if breach does not go to root of matter and can be readily compensated in damages, party may not rescind. West’s Ann.Cal.Civ.Code § 1689(b)(2).—*Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, certiorari granted 113 S.Ct. 2992, 509 U.S. 903, 125 L.Ed.2d 687, reversed 114 S.Ct. 1023, 510 U.S. 517, 127 L.Ed.2d 455, on remand 21 F.3d 354, on remand 1995 WL 261504, affirmed and remanded 94 F.3d 553.—Contracts 261(2).

C.A.8 (Minn.) 1993. Under Minnesota law, problems with spare parts delivered in connection with complex sale of aircraft could have been worked out by financial setoff between parties, and did not rise to level of “material breach,” excusing buyer’s performance.—*Northwest Airlines, Inc. v. Flight Trails*, 3 F.3d 292.—Sales 172.

C.A.8 (Mo.) 1987. Under Missouri law, land contract vendors’ inability to convey marketable title to property free and clear of all liens and encumbrances constituted “material breach” of purchase agreement, such as would entitle purchaser to rescind.—*In re Progressive Farmers Ass’n*, 829 F.2d 651, certiorari denied South Cent. Enterprises, Inc. v. Farrington, 108 S.Ct. 1574, 485 U.S. 1021, 99 L.Ed.2d 889.—Ven & Pur 110.

C.A.1 (R.I.) 1994. Under Rhode Island law, while “material breach” of employment contract need not completely frustrate entire purpose of contract, it must be so important that it makes continued performance by nonbreaching party virtually pointless.—*Gibson v. City of Cranston*, 37 F.3d 731.—Mast & S 2.1.

C.A.3 (Virgin Islands) 1965. Seller’s failure to make required shipments of cement blocks was “material breach” which would have warranted cancellation of contract but for buyer’s continuing acceptance of seller’s part performance; under those circumstances buyer’s remedy was in damages by way of recoupment or counterclaim.—*Island Block Corp. v. Jefferson Const. Overseas, Inc.*, 349 F.2d 322.—Sales 117.

Ct.Cl. 1972. Prolonged failure of United States to pay large amounts due on contract for purchase of helium was a “material breach” of the contract where, at time suit was filed, \$8,671,632 was owing to plaintiff corporation.—*Northern Helix Co. v. U.S.*, 455 F.2d 546, 197 Ct.Cl. 118.—U S 73(16).

M.D.Ala. 1997. “Material breach” of contract occurs only when injured party has sustained substantial injury by breach.—*Malladi v. Brown*, 987 F.Supp. 893, affirmed U.S. v. Ponder, 150 F.3d 1197.—Contracts 317.

N.D.Cal. 1987. Record company’s deposit of songwriter’s royalties into interest-bearing escrow account, pending trial court’s decision on record company’s infringement claims against songwriter, did not constitute “material breach” of parties’ agreement such as might entitle songwriter to rescind, where record company demonstrated good faith by notifying songwriter of terms of escrow account and by allowing songwriter the option of providing other security.—*Fantasy, Inc. v. Fogerty*, 664 F.Supp. 1345, affirmed 984 F.2d 1524, certiorari granted 113 S.Ct. 2992, 509 U.S. 903, 125 L.Ed.2d 687, reversed 114 S.Ct. 1023, 510 U.S. 517, 127 L.Ed.2d 455, on remand 21 F.3d 354, on remand 1995 WL 261504, affirmed and remanded 94 F.3d 553.—Contracts 261(2).

D.Md. 2002. Under New York law, a breach of contract is deemed a “material breach” if it defeats the object of the parties in making the contract and deprives the injured party of the benefit that it

justifiably expected.—*CompuSpa, Inc. v. International Business Machines Corp.*, 228 F.Supp.2d 613.—Contracts 317.

D.Md. 2002. Under New York law, even if computer consulting firm failed to disclose an existing claim or lien against it, as would constitute breach of its contract to supply client with workers, such breach was not a "material breach," as would allow client to terminate contract immediately for cause, though corporation's bank accounts were garnished during the contract, resulting in delay paying workers supplied to client; all of the workers continued working for client, and were paid one week later.—*CompuSpa, Inc. v. International Business Machines Corp.*, 228 F.Supp.2d 613.—Contracts 261(2).

D.Mass. 2001. "Material breach" of contract occurs when there is breach of essential and inducing feature of contract.—*Dunkin' Donuts Inc. v. Gav-Stra Donuts, Inc.*, 139 F.Supp.2d 147.—Contracts 312(1).

S.D.N.Y. 1990. "Material breach" of contract is breach that would justify other party's suspension of own performance of contract.—*Janvin Inc. v. Colonia, Inc.*, 739 F.Supp. 182.—Contracts 317.

S.D.N.Y. 1988. Franchisee's failure to tender royalty payment and failure to cure upon receiving notice of default until well after expiration of grace period was "material breach," rather than "technical default," and justified termination of franchise agreement under Kentucky law.—*Truglia v. KFC Corp.*, 692 F.Supp. 271, affirmed 875 F.2d 308.—Contracts 318.

D.R.I. 1994. Insured did not commit "material breach" of general liability insurance policy by failing to notify insurer for nearly one year that insured was named as defendant in lawsuit and, thus, insurer was not excused under Rhode Island law from its duty to defend insured, even if prejudice caused by insured's late notice was significant, and even if it raised expenses of litigation.—*Nortek, Inc. v. Liberty Mut. Ins. Co.*, 858 F.Supp. 1231.—Insurance 316B.

E.D.Va. 1999. "Material breach" of party's obligations under contract, as will entirely discharge nonbreaching party's obligation to perform, occurs when nonbreaching party did not receive the substantial benefit of its bargain.—*U.S. ex rel. Virginia Beach Mechanical Services, Inc. v. SAMCO Const. Co.*, 39 F.Supp.2d 661.—Contracts 318.

E.D.Va. 1995. Under Virginia law, "material breach" of contract is one that goes to root of contract.—*RW Power Partners, L.P. v. Virginia Elec. and Power Co.*, 899 F.Supp. 1490.—Contracts 317.

E.D.Va. 1995. Under Virginia law, cogenerator's failure to have in place letter of credit, required by capacity and power purchase agreement between electric utility and cogenerator, for at most 10 days, during which time no injury befell utility, was not "material breach" of contract and, thus, utility was not entitled to terminate agreement due to that breach; utility was not deprived of continued availability of cogeneration facility and cogen-

erator's payment of obligations to utility, utility suffered no damage, termination of agreement resulted in forfeiture by cogenerator, cogenerator provided replacement letter of credit, and cogenerator's breach did not fail to comport with standards of good faith or fair dealing. Restatement (Second) of Contracts § 241.—*RW Power Partners, L.P. v. Virginia Elec. and Power Co.*, 899 F.Supp. 1490.—Contracts 261(2).

W.D.Va. 2000. Under Virginia law, "material breach" is a failure to do something that is so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract.—*In re Sandman Associates, L.L.C.*, 251 B.R. 473.—Contracts 317.

Bkrty.C.D.Cal. 1999. Under California law, any shortfall in bank's tender of performance under confidential settlement agreement (CSA), in offering to purchase annuity contract from third party insurer, in alleged discharge of its own primary obligation to provide such periodic payments to debtor, did not rise to level of "material breach" of CSA, such as would excuse debtor from performing, where first annuity payment had not yet become due at time of bank's offer, where nothing in record suggested that bank was either unable or unwilling to perform its installment obligation as directed by CSA, and where declaring the CSA contract voided by reason of bank's annuity tender would deprive bank of any reasonable opportunity to cure defect in its tender long before its first payment became due.—*In re Schultz*, 275 B.R. 875.—Compromise 20(1).

Bkrty.D.Md. 2001. Under New York law, a "material breach" of a contract is defined as one that is significant enough to amount to the nonoccurrence of a constructive condition of exchange; thus, a material breach is one that justifies termination of the contract.—*In re Regional Building Systems, Inc.*, 273 B.R. 423, subsequently affirmed 320 F.3d 482.—Contracts 317.

Bkrty.D.Mass. 1999. Under Massachusetts law, "material breach" of contract, of kind sufficient to excuse any further performance by nonbreaching party, occurs when there is breach of an essential and inducing feature of contract.—*In re Wet-Jet Intern., Inc.*, 235 B.R. 142.—Contracts 318.

Bkrty.E.D.N.Y. 1991. Agreement for the sale of debtor's insurance agency was not "executory contract," which trustee was required to assume or reject, where only performance remaining due on debtor's part was his obligation not to compete with purchaser in same geographic area; any breach by debtor of his obligation not to compete would enable purchaser to sue for damages or injunctive relief, but would not be "material breach" relieving purchaser of obligations under agreement. Bankr. Code, 11 U.S.C.A. § 365.—*In re Bluman*, 125 B.R. 359.—Bankr 3103.1.

Bkrty.S.D.N.Y. 1999. Under New York law, "material breach" of contract, such as will relieve nonbreaching party of obligation to perform thereunder, is one that goes to root of contract.—*In re*

Adler, Coleman Clearing Corp., 247 B.R. 51, affirmed 263 B.R. 406.—Contracts 318.

Bkrtcy.E.D.Va. 1988. Chapter 13 debtor's failure to make seven postconfirmation mortgage payments was "material breach" warranting dismissal of the case, and mortgagee's motion to dismiss, which was filed prior to debtor's request for modification of plan, was required to be decided first. Bankr.Code, 11 U.S.C.A. § 1307(c)(6).—In re Sensabaugh, 88 B.R. 95.—Bankr 3715(14), 3716.30(6).

Colo. 1968. Where parties intended that contractor's brick work would reasonably match existing brick work on house and court found that to extent of 50% of contract price there was failure to perform, contractor was guilty of "material breach" of contract.—Reynolds v. Armstead, 443 P.2d 990, 166 Colo. 372.—Contracts 302.

Colo.App. 2000. Whether there has been a "material breach" of contract turns upon the importance or seriousness of the breach and the likelihood that the injured party nonetheless received, or will receive, substantial performance under the contract.—Interbank Investments, L.L.C. v. Vail Valley Consolidated Water Dist., 12 P.3d 1224.—Contracts 317.

Colo.App. 2000. A "material breach" of a contract goes to the root of the matter or essence of the contract and renders substantial performance under the contract impossible.—Interbank Investments, L.L.C. v. Vail Valley Consolidated Water Dist., 12 P.3d 1224.—Contracts 317.

Colo.App. 2000. Developer's failure to promptly provide water districts with bills of sale, conveyances of easements, final as-built drawings, and cost documentation was not a "material breach" of districts' agreement to repay costs of constructing water distribution systems, where districts' use of the water systems was not obstructed and most of the documentation, or its equivalent, was ultimately provided to districts.—Interbank Investments, L.L.C. v. Vail Valley Consolidated Water Dist., 12 P.3d 1224.—Waters 194.

Idaho App. 1992. "Material breach" of contract is breach so substantial and fundamental that it defeats object of parties in entering into contract.—Mountain Restaurant Corp. v. ParkCenter Mall Associates, 833 P.2d 119, 122 Idaho 261.—Contracts 317.

Ill.App. 1 Dist. 1996. Failure to perform is "material breach" of contract, such as will discharge other party of its duty to perform, where unperformed covenant is of such importance that contract would not have been made without it.—U.S. Fidelity and Guar. Co. v. Old Orchard Plaza Ltd. Partnership, 220 Ill.Dec. 59, 672 N.E.2d 876, 284 Ill.App.3d 765, rehearing denied.—Contracts 318.

Ill.App. 1 Dist. 1996. Lessor's alleged failure to make \$2 million termination payment required under terms of parties' sales-and-lease-back agreement, when lessee elected not to exercise its option to renew lease for additional five-year term at below-market rent, would constitute "material breach" of parties' agreement of kind which might

relieve lessee of obligation to pay its share of real estate taxes billed after it had vacated premises.—U.S. Fidelity and Guar. Co. v. Old Orchard Plaza Ltd. Partnership, 220 Ill.Dec. 59, 672 N.E.2d 876, 284 Ill.App.3d 765, rehearing denied.—Land & Ten 148(1).

Ill.App. 5 Dist. 1993. Employer's failure to determine net worth of corporation within 30 days after terminated employee requested that it purchase his stock constituted "material breach" of purchase and sale agreement, and thus, employer could not rely on provision of agreement which halved value of employee's stock if he was terminated, where employer did not offer evaluation of corporation's net worth until approximately three years after employee's initial request, even though employee indicated that he had certain obligations to meet and that he needed his money, employer did not intend to give employee value of his stock, and employer thought it could pay what it wished to pay for stock instead of performing proper valuation pursuant to agreement.—McBride v. Pennant Supply Corp., 191 Ill.Dec. 457, 623 N.E.2d 1047, 253 Ill.App.3d 363.—Corp 82.

Me. 2001. A "material breach" of a contract is a non-performance of a duty that is so material and important as to justify the injured party in regarding the whole transaction as at an end.—Jenkins, Inc. v. Walsh Bros., Inc., 776 A.2d 1229, 2001 ME 98, appeal after remand 810 A.2d 929, 2002 ME 168.—Contracts 315.

Mass. 1991. Owner committed "material breach" of development agreement which required its approval if it was presented with development plan that developer need not have submitted for approval, and thus, developer was entitled to renounce contract; owner's letter to developer disapproving developer plan precluded developer, as practical matter, from performing its obligation under sales agreement to begin construction of hotel by outside closing date.—Anthony's Pier Four, Inc. v. HBC Associates, 583 N.E.2d 806, 411 Mass. 451.—Contracts 313(1).

Mass.App.Ct. 1992. "Material breach" of an agreement occurs when there is breach of an essential and inducing feature of the contract.—Lease-It, Inc. v. Massachusetts Port Authority, 600 N.E.2d 599, 33 Mass.App.Ct. 391.—Contracts 317.

Mich. 1998. The amount specified in a land contract forfeiture judgment is the only monetary payment that needs to be made to preclude the issuance of a writ of restitution in a proceeding under the Revised Judicature Act; failure to make payments due on the underlying land contract that accrue during the redemption period, after the judgment has been entered, is not a "material breach" under the statute preventing the issuance of the writ if payment is made in an amount provided in the judgment and other material breaches are cured, and such failure will not support issuance of the writ. M.C.L.A. § 600.5744(6).—Wilson v. Taylor, 577 N.W.2d 100, 457 Mich. 232.—Ven & Pur 299(4).

Minn.App. 1997. Purchaser's delay in making a single installment payment was not type of "material breach" or "substantial failure of performance" that cancelled contract for deed. M.S.A. § 559.21, subd. 2a.—Coddon v. Youngkrantz, 562 N.W.2d 39, review denied.—Ven & Pur 93.

Mo. 1965. Trial court's failure to define phrase "material breach" in instruction relating to alleged breach of contract was not erroneous, as words are not technical but ordinary words which are commonly understood and for which no special definition was required.—Transportation Equipment Rentals, Inc. v. Strandberg, 392 S.W.2d 319.—Trial 219.

Mont. 1979. A "substantial breach" or a "material breach" is one which touches the fundamental purpose of the contract and defeats the object of the parties in making the contract.—Rogers v. Reylea, 601 P.2d 37, 184 Mont. 1.—Contracts 317.

N.Y.A.D. 2 Dept. 1994. Even if promissory notes were part of contract for sale of apartment building, failure to timely pay promissory note was not "material breach" of contract of sale, as time was not rendered of essence with respect to payment of notes.—41-41 51st Street Realty Associates v. Tura Associates, 616 N.Y.S.2d 73, 207 A.D.2d 524.—Ven & Pur 185.

N.Y.Sup. 1987. Purchasers' failure to apply for loan within five-day period set out in standard contract of sale was not "material breach" of obligations thereunder, so as not to preclude them from exercising rights under contingency clause when loan application was refused.—D'Ambrogio v. Morgenstern, 516 N.Y.S.2d 447, 135 Misc.2d 643.—Ven & Pur 79.

N.C.App. 1984. Rescission of a separation agreement requires proof of a "material breach"—a substantial failure to perform.—Cator v. Cator, 321 S.E.2d 36, 70 N.C.App. 719.—Hus & W 279(2).

Ohio App. 3 Dist. 2001. Evidence that accounting firm was aware that cash account for client's payment of federal payroll taxes had not been reconciled in several months, and that accounting firm was aware that the approximately \$1.7 million balance of three out-of-sequence checks was outstanding at time of audit of client's financial statements, established that firm's breach of its contract to review client's internal control structure and notify client of any deficiencies was a "material breach."—JTD Health Sys., Inc. v. Pricewaterhouse Coopers, LLP, 750 N.E.2d 1177, 141 Ohio App.3d 280, 2001-Ohio-2141, appeal not allowed 748 N.E.2d 550, 92 Ohio St.3d 1418.—Accts 10.1.

R.I. 2001. Nonprofit low-income housing developer's failure to include anti-kickback and equal employment opportunity (EEO) language in its subcontracts, to obtain prior written approval from city before subcontracting various services, and to use competitive-bidding procurement procedures, were not, individually or collectively, a "material breach" of development contract with city, where such breaches were not shown to have deprived city of any reasonably expected contractual benefits or

to have been incapable of being cured if city had brought the breaches to developer's attention in a timely fashion. Restatement (Second) of Contracts § 241.—Women's Development Corp. v. City of Central Falls, 764 A.2d 151.—Mun Corp 356.

R.I. 2001. Nonprofit low-income housing developer's failure to adhere to certain specific federal mandates in its subcontracts was not a "material breach" of developer's contract with city, where city was not in any real jeopardy of losing present or future federal Community Development Block Grant (CDBG) funding; federal authorities had not provided city with notice of alleged noncompliance with CDBG requirements, and there was no indication city was likely to receive such notice or undergo a disqualification proceeding. Housing and Community Development Act of 1974, § 111, 42 U.S.C.A. § 5311; 24 C.F.R. §§ 570.495, 570.496.—Women's Development Corp. v. City of Central Falls, 764 A.2d 151.—Mun Corp 356.

Va. 1997. "Material breach" is failure to do something that is so fundamental to contract that failure to perform that obligation defeats essential purpose of contract.—Horton v. Horton, 487 S.E.2d 200, 254 Va. 111.—Contracts 317.

Wis. 1937. Where wife took over business of husband, who owed bank on a note, and signed guaranty of indebtedness of the business on oral promise of bank to lend her money to run the business, breach by bank of promise to loan money was a "material breach" which relieved wife of duty to perform under guaranty.—People's Trust & Sav. Bank v. Wasserstein, 276 N.W. 330, 226 Wis. 249.—Guar 17.

MATERIAL BREACH DOCTRINE

Ill.App. 1 Dist. 1997. Under "material breach doctrine," party to contract is discharged from his duty to perform where there is a material breach of the contract by the other party; "material breach" occurs where covenant not performed is of such importance that contract would not have been made without it.—Dragon Const., Inc. v. Parkway Bank & Trust, 222 Ill.Dec. 648, 678 N.E.2d 55, 287 Ill.App.3d 29, appeal denied 226 Ill.Dec. 132, 684 N.E.2d 1335, 173 Ill.2d 524.—Contracts 315, 318.

MATERIAL BREACHES

C.A.2 (N.Y.) 1992. Under New York law, 30-day notice requirement for termination of sale and distribution agreement for "material breaches" was applicable to manufacturer's termination, which occurred when distributor allegedly repudiated agreement by invoking its right under agreement not to purchase further products from manufacturer and to self-manufacture following manufacturer's default.—Bausch & Lomb Inc. v. Bressler, 977 F.2d 720.—Sales 84.

MATERIAL BREACH OF CONTRACT

C.A.2 (N.Y.) 1991. Even if subcontractor was entitled to remaining contract balance, subcontractor's failure to pay on that date would not justify subcontractor's abandonment of project, and thus,

subcontractor's abandonment of project constituted "material breach of contract" under New York law, thus entitling contractor to elect to terminate contract.—*Wolff & Munier, Inc. v. Whiting-Turner Contracting Co.*, 946 F.2d 1003.—*Contracts* 215(1), 256.

Cal. 1943. Where time was of importance in performance of gold mining lease and one of main objects of lease was to have mineral removed from property as soon as possible and that advantage be taken of 1937–1938 water and mining season, failure of lessees to take possession and commence mining operations constituted a "material breach of contract".—*Gold Mining & Water Co. v. Swinerton*, 142 P.2d 22, 23 Cal.2d 19.—*Mines* 68(2).

Cal. 1943. Where time is made the essence of a contract, a failure to perform within the time specified is a "material breach of contract".—*Gold Mining & Water Co. v. Swinerton*, 142 P.2d 22, 23 Cal.2d 19.—*Contracts* 299(1).

Okla. 1942. Where purchaser required vendor to sign letter under which vendor agreed to pay certain taxes before the purchaser would agree to purchase lots, vendor's failure to pay the taxes constituted a "material breach of contract" and entitled the purchaser to rescind. 15 Okl.St. Ann. § 233.—*G.A. Nichols, Inc. v. Hainey*, 122 P.2d 809, 190 Okla. 242, 1942 OK 31, 139 A.L.R. 967.—*Ven & Pur* 110.

MATERIAL CAUSE

D.Del. 1987. "But for" rule of causation is inadequate to determine causation issues under "Comprehensive Environmental Response, Compensation, and Liability Act", where two or more causes have concurred to bring about event and any one of them, operating alone, would have been sufficient to cause identical result; instead, defendant's conduct is "cause" of the event if it was "material cause" and a "substantial factor" in bringing it about. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101 et seq., as amended, 42 U.S.C.A. § 9601 et seq.—*Artesian Water Co. v. Government of New Castle County*, 659 F.Supp. 1269, affirmed 851 F.2d 643, rehearing denied.—*Environ Law* 445(1).

MATERIAL CAUSES

N.J.Super.A.D. 1991. Evidence established that workers compensation claimant's underlying condition of compulsive personality created stress on job, and that no objectively verified "stressful work conditions" "peculiar" to workplace justified medical opinion that conditions were "material causes" of claimant's disability, a chronic severe depression; evidence was presented that evaluation of claimant, who worked as supervisor of records in office of clerk of superior court, and events taking place after evaluation resulted from legitimate criticism arising from backlog and that what claimant found stressful was his perception of his conflict with supervisor and management. N.J.S.A. 34:15–31, 34:15–36.—*Goyden v. State, Judiciary, Superior Court of New Jersey*, 607 A.2d 651, 256 N.J.Super.

438, affirmed 607 A.2d 622, 128 N.J. 54.—*Work Comp* 1529.

MATERIAL CHANGE

C.A.7 1983. Change in physical structure and location of IRS office to accommodate transferred employees did not constitute "material change" in working conditions concerning which IRS was required to negotiate with treasury employees union, especially as negotiation requirement on such subject would conflict with statutory goal of effective and efficient government. 5 U.S.C.A. §§ 7101 et seq., 7101(b).—*I.R.S. v. Federal Labor Relations Authority*, 717 F.2d 1174.—*Labor* 178.

E.D.La. 1988. Rule promulgated by Louisiana Department of Health and Human Resources, uniformly reducing interim medicaid reimbursement rates for in-patient hospital services by 10%, constituted "material change" in Department operation which violated federal medicaid regulations because state plan was not amended with Health Care Financing Administration approval, notwithstanding state's contention that, without reduction, state might be subject to newly enacted federal regulations on a state's overpayment to hospitals. Social Security Act, §§ 1801–1889, as amended, 42 U.S.C.A. §§ 1395–1395zz.—*St. Tammany Parish Hosp. Service Dist. v. Department of Health and Human Resources*, 677 F.Supp. 455.—*Health* 487(3).

Ark. 1935. Alteration of instrument, to be material, must be actual alteration in material part of instrument and affect parties' rights and liabilities; "material change" being one which causes instrument to speak different language in legal effect than before (*Crawford & Moses' Dig.* § 7891).—*Woods v. Spann*, 82 S.W.2d 850, 190 Ark. 1085.—*Alt of Inst* 2.

Ark. 1918. Changing language of contract of guaranty from a requirement for payment by principal in 35 days to a requirement of payment within a reasonable time is a "material change," absolving guarantors from liability under the circumstances.—*Robertson v. Southwestern Co.*, 206 S.W. 755, 136 Ark. 417.—*Guar* 54.

Fla.App. 3 Dist. 1993. Ex-post facto imposition of time limit to "submission deadline" was "material change" in advertisement for public contract proposals.—*Air Support Services Intern., Inc. v. Metropolitan Dade County*, 614 So.2d 583.—*Pub Contr* 12.

Hawai'i 2000. Changing the identity of the named insured, in and of itself, may not necessarily constitute a "material change" to the no-fault motor vehicle policy that would require the insurer to make a new offer of uninsured motorist (UM) and underinsured motorist (UIM) coverage to the new named insured; the change of named insured must have significant impact on legal relationship and obligations between insurer and insured under the policy, and impact of that change must be considered in light of any other changes in the policy and public policies underlying the Motor Vehicle Insurance Code. HRS § 431:10C–301(b)(3), (d)

(1993).—*Allstate Ins. Co. v. Kaneshiro*, 998 P.2d 490, 93 Hawai'i 210.—Insurance 2775.

Hawai'i 2000. Changes to no-fault motor vehicle policy, removing husband as named insured and substituting wife as sole named insured after insurer had notice that wife was no longer husband's resident spouse due to their pending divorce, and adding a vehicle to the policy, taken together, constituted a "material change" to the policy issued to husband, so that the changed policy was not merely a "renewal or replacement policy" and insurer was therefore required to make a new offer of uninsured motorist (UM) and underinsured motorist (UIM) coverage to wife, though husband previously had declined UM and UIM coverage at renewal when he was the named insured. HRS § 431:10-226; § 431:10C-301(b)(3), (d) (1993).—*Allstate Ins. Co. v. Kaneshiro*, 998 P.2d 490, 93 Hawai'i 210.—Insurance 2775.

La.App.2 Cir. 1993. Change in underinsured motorist coverage occurring when coverage of two insured companies was combined did not result in a "material change" in policy requiring new rejection of underinsured motorist coverage; coverage and insureds remained the same, and two insured companies were practically the same entity at time rejection form was executed, as one company had shut down its business for all practical purposes, and had no physical existence. LSA-R.S. 22:1406.—*Mosley v. Dairyland Ins. Co.*, 614 So.2d 792, writ granted, vacated 620 So.2d 828, rehearing denied 623 So.2d 1291, writ denied 652 So.2d 1348, 1995-0502 (La. 4/7/95).—Insurance 2778.

La.App.2 Cir. 1943. Where seller of filling station business executed continuing guaranty of account of buyer with oil company, and subsequently the station was destroyed by fire, the fact that because of the fire the buyer moved to another location, where he continued to conduct business in the same manner as before the fire, did not release the seller from the guaranty on ground that there was a "material change" in the contract between the buyer and the oil company.—*Magnolia Petroleum Co. v. Harley*, 13 So.2d 84.—Guar 53(1).

Mo.App.E.D. 1995. Change in lenders was not "material change" under terms of guaranty contract, and guarantor was not discharged thereby, despite guarantor's contention that his and debtor's personal relationships with original lender, and lender's small size, made his guaranty a low risk guaranty, and that substitution of bank, as surviving institution following merger between bank and lender, increased his risks; possible changes in creditors were clearly within scope of guaranty agreement, under which guarantee was extended to original lender and "its successors and assigns."—*Boatmen's Nat. Bank of St. Louis v. Nangle*, 899 S.W.2d 542, rehearing, transfer denied.—Guar 50.

Neb. 1935. Holder's change in time of maturity on note without maker's consent constitutes "material alteration" which releases maker. Comp.St. 1929, §§ 62-806, 62-807. A "material change" in a note is one that causes it to speak a language different in legal effect from that in which it origi-

nally spoke.—*Bank of Cedar Bluffs v. Beck*, 258 N.W. 528, 128 Neb. 244, 96 A.L.R. 1099.

N.D. 2001. In order to modify an award of spousal support, the obligor spouse has the burden of showing a material change in circumstances justifying the modification, and "material change" is something substantially affecting the financial abilities or needs of a party.—*Sommer v. Sommer*, 636 N.W.2d 423, 2001 ND 191.—Divorce 245(2), 245(3).

N.D. 2001. "Material change," warranting modification of spousal support payments, is something which substantially affects a party's financial abilities or needs, and the reason for changes in income must be examined as well as the extent the changes were originally contemplated by the parties.—*Lohstreter v. Lohstreter*, 623 N.W.2d 350, 2001 ND 45.—Divorce 245(2).

N.D. 2000. Spousal support payments may be modified only upon a showing of a material change of circumstances which justifies a modification; a "material change" is something which substantially affects a party's financial abilities or needs, and the reason for changes in income must be examined as well as the extent the changes were originally contemplated by the parties.—*Pearson v. Pearson*, 606 N.W.2d 128, 2000 ND 20, rehearing denied.—Divorce 245(2).

N.D. 1997. "Material change" of circumstances justifying modification of spousal support order is something substantially affects the financial abilities or needs of party.—*Cermak v. Cermak*, 569 N.W.2d 280, 1997 ND 187.—Divorce 245(2).

N.D. 1991. In determining whether material change of circumstances justify modification of spousal support payments, "material change" means something which substantially affects financial abilities or needs of party, and reason for changes in income must be examined as well as extent that changes were originally contemplated by parties.—*Huffman v. Huffman*, 477 N.W.2d 594.—Divorce 245(2).

Okla. 1996. Decrease in limits of liability coverage under business automobile policy from \$5,000,000 to \$3,000,000 was "material change" of policy that was tantamount to issuance of new policy under uninsured motorist (UM) statute as construed in *Beauchamp*. 36 O.S.Supp.1990, § 3636.—*May v. National Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 918 P.2d 43, 1996 OK 52, rehearing denied, answer to certified question conformed to 84 F.3d 1342.—Insurance 2796.

Or. 1978. Where lease of land on which condominium was located, as originally filed with the state real estate commissioner, contained provision whereby proposed condominium association had option to purchase the land on which the condominium was located, every fifth year thereafter, at a purchase price to be determined by three licensed appraisers, subsequent amendment to lease to provide for a \$380,000 minimum purchase price was a "material change" requiring notice to the real estate commissioner under statutes providing for no-

tice of any "material change" after the filing of a preliminary declaration. ORS 91.545, Laws 1971, c. 658; ORS 92.235, Laws 1969, c. 508; ORS 92.260, Laws 1965, c. 584.—*Wiley v. Berg*, 578 P.2d 384, 282 Or. 9.—*Condo* 9.

Or.App. 1991. Surety is discharged if, without consent, any modification of contractual relationship between principal and creditor materially increases risk; "material change" is one that careful and prudent person would regard as substantially increasing chance of loss.—*Black Bull Enterprises, Inc. v. Hall*, 813 P.2d 571, 107 Or.App. 754, review denied 822 P.2d 1194, 312 Or. 525.—*Princ & S* 97.

Or.App. 1987. Modification of contract between principal and creditor, without compensated surety's consent, constitutes "material change" sufficient to discharge surety if change is one that careful and prudent person undertaking risk would regard as substantially increasing chance of loss.—*Samuelson v. Promontory Inv. Corp.*, 736 P.2d 207, 85 Or.App. 315.—*Princ & S* 99.

Or.App. 1984. For purposes of determining whether modification of principal and creditor's contract was a "material change," discharging surety, "material change" is one that a careful and prudent person undertaking risk would have regarded as substantially increasing chances of loss.—*Fassett v. Deschutes Enterprises, Inc.*, 686 P.2d 1034, 69 Or.App. 426, review denied 690 P.2d 506, 298 Or. 150.—*Princ & S* 97.

Pa.Super. 1970. Where Liquor Control Board imposed fine of \$100 on licensees because of finding that sales of beer were made to minor on August 30, 1969, September 6, 1969, and September 13, 1969, court of common pleas was not justified in reducing fine to \$50 because it found that sales to minor were made on August 30, 1969, September 13, 1969, and "on one other occasion," since fact that court of common pleas did not expressly mention sale on September 6, 1969 but rather found sale "on one other occasion" was not a "material change" in finding of Board and did not justify reduction of fine.—*Pennsylvania Liquor Control Bd. v. Yugovich*, 272 A.2d 510, 217 Pa.Super. 353.—*Int Liq* 108.10(9).

R.I. 1993. Former husband's retirement, following protracted delay by ex-wife in seeking to enforce his child support obligations, was not "material change" in his economic circumstances, such as might establish "prejudice" as required for husband to assert laches defense to ex-wife's enforcement action; husband retired from Navy with expectation of finding suitable civilian employment.—*Adam v. Adam*, 624 A.2d 1093.—*Child S* 451.

Tex.Civ.App.—El Paso 1934. Where pencil or pen line had been run through terms of mortgage extension agreement, rendering purchaser of mortgaged premises personally liable for mortgage indebtedness, before purchaser signed agreement, removal of line without purchaser's consent constituted "material change" which vitiated instrument.—*North American Life Ins. Co. of Chicago v. Fulton*, 73 S.W.2d 630.—*Alt of Inst* 5(1).

MATERIAL CHANGE IN CIRCUMSTANCES

Ala.Civ.App. 1994. Increase in wife's income since time of divorce was not "material change in circumstances" warranting reduction in ex-husband's child support obligation, where ex-husband's earnings had also increased, and ex-husband enjoyed fringe benefits from his business, including travel, country club membership, credit card account and medical insurance coverage for ex-husband and children.—*Grant v. Smith*, 661 So.2d 752, rehearing denied, and certiorari quashed.—*Child S* 258, 277.

Ala.Civ.App. 1994. In determining whether there is "material change in circumstances" warranting modification of periodic alimony award, trial court must consider financial needs of payee spouse and financial ability of payor spouse to respond to those needs; it is payor spouse's ability to earn and pay support, rather than his actual income, that is determinative.—*Taylor v. Taylor*, 640 So.2d 971.—*Divorce* 245(2).

Ala.Civ.App. 1991. Increased need of minor child and decreased purchasing power of child support award made ten years previously were sufficient to constitute "material change in circumstances" to support modification of child support award.—*Kellum v. Jones*, 591 So.2d 891.—*Child S* 236, 290.

Ala.Civ.App. 1988. Enactment of child support guidelines and the fact that recommended guidelines child support figure was lower than that paid by divorced husband did not constitute a "material change in circumstances" requiring modification of support award. Judicial Administration Rules 32, 32(A).—*Davis v. Davis*, 535 So.2d 183.—*Child S* 356.

Alaska 1999. Amendment permitting a non-custodial parent to receive a child support credit for providing court-ordered health insurance was not a "material change in circumstances" for purposes of father's post-divorce motion seeking a modification to allow him to claim one of his daughters as a tax exemption. Rules Civ.Proc., Rule 90.3(h)(1).—*Rusenstrom v. Rusenstrom*, 981 P.2d 558, rehearing denied.—*Child S* 351.

Ark.App. 2001. Neither divorced mother's voluntary relocation, nor child's success in school and good relationship with father, was sufficient, by itself, to constitute "material change in circumstances," as basis to warrant change of custody.—*Gerot v. Gerot*, 61 S.W.3d 890, 76 Ark.App. 138, opinion supplemented on denial of rehearing 65 S.W.3d 494.—*Child C* 552, 568.

Ark.App. 2001. A custodial parent's move that is made in order to better his or her financial ability to provide for a child is not, in and of itself, a "material change in circumstances" to be used to the detriment of that parent, but is one factor which may be considered when determining whether a material change in circumstances exists so as to warrant modification of custody.—*Gerot v. Gerot*, 61 S.W.3d 890, 76 Ark.App. 138, opinion supple-

mented on denial of rehearing 65 S.W.3d 494.—Child C 568.

Ark.App. 1996. Finding of “material change in circumstances” sufficient to justify change of custody of parties’ eight and ten-year-old daughters from father to mother could not be based on chancellor’s belief that, because children were now 14 months older, they now needed their mother; presumption that girls of that age should be raised by their mother violated statute that abolished any gender-based presumption or legal preference in child custody actions. A.C.A. § 9-13-101.—Harrington v. Harrington, 928 S.W.2d 806, 55 Ark.App. 22.—Child C 555, 634.

Ill.App.1 Dist. 1993. Intensified use of surrounding property consistent with preexisting zoning classification is not “material change in circumstances” as required to defeat application of res judicata to earlier judgment in zoning matter.—Burke v. Village of Glenview, 195 Ill.Dec. 1, 628 N.E.2d 465, 257 Ill.App.3d 63.—Zoning 727.

Kan.App. 2000. “Material change in circumstances,” such as will permit a change or modification of prior order of child custody, involves an alteration and passage from one condition to another and requires consideration of a variety of factors or circumstances. K.S.A. 60-1610(a)(2).—Johnson v. Stephenson, 15 P.3d 359, 28 Kan.App.2d 275, review denied.—Child C 556.

La. 1998. Mother’s relocation with child to another state, Washington, was “material change in circumstances” making original custody decree unworkable.—Evans v. Lungrin, 708 So.2d 731, 1997-0541, 1997-0577 (La. 2/6/98), appeal after remand 758 So.2d 256, 1999-1228 (La.App. 3 Cir. 2/2/00), writ denied 755 So.2d 890, 2000-0683 (La. 3/15/00), reconsideration denied 760 So.2d 1166, 2000-0683 (La. 4/28/00).—Child C 568.

Mass.App.Ct. 1989. Development by child of severe mental illness under circumstances suggesting that other children were also at risk was a “material change in circumstances,” justifying court’s modification of divorce decree to increase time that children would be allowed to remain in home prior to sale thereof. M.G.L.A. c. 208, § 28.—Hartog v. Hartog, 535 N.E.2d 239, 27 Mass. App.Ct. 124.—Child S 294.

Miss. 1991. Enactment of child support award guidelines did not constitute “material change in circumstances” warranting reduction of child support on ground that child support payments ordered in divorce decree exceeded the percentage of gross income required by the guidelines. Code 1972, § 43-19-101.—Gregg v. Montgomery, 587 So.2d 928.—Child S 234, 356.

Neb. 2002. Party seeking modification of child custody bears the burden of showing a material change in circumstances; a “material change in circumstances” means the occurrence of something which, had it been known to the dissolution court at the time of the initial decree, would have persuaded the court to decree differently.—Tremain v. Tre-

main, 646 N.W.2d 661, 264 Neb. 328.—Child C 556, 633.

Neb. 1997. In context of marital dissolutions, “material change in circumstances” means occurrence of something which, had it been known to dissolution court at time of initial decree, would have persuaded court to decree differently.—Smith-Helstrom v. Yonker, 569 N.W.2d 243, 253 Neb. 189.—Divorce 164.

Neb. 1991. In context of marital dissolutions, “material change in circumstances” such as would justify change in custody of minor children means the occurrence of something which, had it been known to the dissolution court at the time of the initial decree, would have persuaded the court to decree differently.—Peterson v. Peterson, 474 N.W.2d 862, 239 Neb. 113.—Child C 555.

Neb. 1985. “Material change in circumstances” such as will justify modification of child support becoming due in future involves alteration and passage from one condition to another and requires consideration of variety of factors and circumstances, including obligated parent’s financial means, needs of child or children for whom support is to be paid, and good or bad-faith motive of obligated parent in sustaining reduction of means, and permanence of change.—Ohler v. Ohler, 369 N.W.2d 615, 220 Neb. 272.—Child S 254, 290.

Neb. 1984. “Material change in circumstances,” in reference to modification of child support, is analogous to modification of alimony for “good cause.” Neb.Rev.St. § 42-365.—Morisch v. Morisch, 355 N.W.2d 784, 218 Neb. 412.—Child S 234.

Neb.App. 1994. In context of marital dissolutions, a “material change in circumstances” means the occurrence of something which, had it been known to dissolution court at time of initial decree, would have persuaded court to decree differently.—Muller v. Muller, 524 N.W.2d 78, 3 Neb.App. 159.—Divorce 164.

N.Y.Fam.Ct. 1990. Mere fact that mother had tested positive for the Human Immune Deficiency virus (HIV or AIDS virus) was not, without more, a “material change in circumstances” warranting change in custody from mother to father, where evidence clearly established that mother had not been incapacitated by condition, and where father, although currently testing HIV-negative, had engaged in unprotected sexual intercourse with mother after he was informed of her condition.—Steven L. v. Dawn J., 561 N.Y.S.2d 322, 148 Misc.2d 779.—Child C 563.

N.D. 2002. “Material change in circumstances,” as would support modification of spousal support, means something which substantially affects parties’ financial abilities or needs, and reasons for changes in income must be examined as well as extent changes were contemplated by parties at time of initial decree or subsequent modification.—Quamme v. Bellino, 652 N.W.2d 360, 2002 ND 159.—Divorce 245(2).

N.D. 2000. “Material change in circumstances” warranting modification of custody occurs when

new facts are presented that were unknown to the moving party at the time the decree was entered.—*Mayo v. Mayo*, 619 N.W.2d 631, 2000 ND 204, rehearing denied.—Child C 556.

N.D. 1999. A “material change in circumstances” warranting the modification of a spousal support award is something substantially affecting the financial abilities or needs of a party.—*Greenwood v. Greenwood*, 596 N.W.2d 317, 1999 ND 126.—Divorce 245(2).

N.D. 1999. For purposes of post-divorce child custody modification proceeding, finding of a “material change in circumstances” based upon mother’s mental inability to cope with and parent her growing child was not clearly erroneous, even though mother’s mental abilities apparently had not worsened since the original placement; there was abundant evidence that mother was no longer able to effectively care for child because of her mental limitations, including dyslexia, a learning disability, a low IQ, and developmental disability. NDCC 14-09-06.6.—*Holtz v. Holtz*, 595 N.W.2d 1, 1999 ND 105.—Child C 637.

N.D. 1999. Where the present environment endangers a child’s physical or emotional health or impairs the child’s emotional development, there is, as a matter of law, a “material change in circumstances” that warrants a change of custody. NDCC 14-09-06.6, subd. 6.—*Holtz v. Holtz*, 595 N.W.2d 1, 1999 ND 105.—Child C 553.

N.D. 1998. Change in custody and resulting child support obligation is not a “material change in circumstances” justifying modification of spousal support; allowing the imposition of a child support obligation to constitute such a material change would indirectly defeat the public policy prescribed by the child support guidelines. NDCC 14-09-09.7, subd. 3; N.D.Admin. Code § 75-02-04.1-09(2).—*Schmalle v. Schmalle*, 586 N.W.2d 677, 1998 ND 201.—Divorce 245(2).

Ohio Com.Pl. 1983. Where father proved he lost his job but did not prove that he quit for good cause or was laid off for lack of work by company, and did not show unemployment in excess of one year nor factual situation indicating that any available prospective employment was highly unlikely, father did not show “material change in circumstances” justifying change in child support order.—*Smith v. Smith*, 467 N.E.2d 913, 12 Ohio Misc.2d 22, 12 O.B.R. 495.—Child S 258, 259.

Okl.App. Div. 3 1993. “Material change in circumstances,” justifying the modification of child support order, may be shown by substantial increase in income of one or both parents, substantial decrease in income of one or both parents, substantial change in needs of child, or combination of these factors. 43 Okl.St. Ann. § 118.—*Tirey v. Tirey*, 866 P.2d 454, 1993 OK CIV APP 184.—Child S 258, 277, 290.

Tex.App.—Corpus Christi 1985. “Material change in circumstances” necessary for custody modification may relate to child, managing conservator, possessory conservator, or other party affect-

ed by prior court order. V.T.C.A., Family Code § 14.08(c)(1)(A).—*Snider v. Grey*, 688 S.W.2d 602, dismissed.—Child C 555.

Utah App. 1994. Change in parties’ incomes from time that they were granted divorce by California trial court, consisting of a nearly 66% reduction in wife’s net monthly income and a near doubling of her ex-husband’s income, was not a “material change in circumstances” justifying modification of child support award where, under Utah child support guidelines applicable at modification proceeding, presumptive child support award differed by less than 25% from that ordered in California divorce action. U.C.A.1953, 78-45-7.2(6).—*Brooks v. Brooks*, 881 P.2d 955.—Child S 506(1), 507.

Va.App. 1996. Substantive child support guideline amendment resulting in significant disparity in parties’ support obligations constitutes “material change in circumstances” created by Code itself and, thus, amended guideline may at once justify review of prior order and specify presumptively correct amount of child support due under existing circumstances. Code 1950, § 20-108.—*Cooke v. Cooke*, 474 S.E.2d 159, 23 Va.App. 60.—Child S 234, 337, 356.

Va.App. 1995. Father’s voluntary participation in union strike was not “voluntary underemployment,” for purposes of determining whether reduction of child support was warranted, where, during and after the marriage, the health of economic relationship between father and child was inexorably entwined with the economic fortunes of the union; under such circumstances, strike itself, notwithstanding father’s voluntary actions in voting for and honoring the strike, constituted the “material change in circumstances” warranting review of his child support obligations.—*Rawlings v. Rawlings*, 460 S.E.2d 581, 20 Va.App. 663.—Child S 259.

Va.App. 1993. Fact that initial amount of child support was less than presumptive amount under guidelines did not constitute “material change in circumstances” that would justify increasing amount of child support, where initial support award was entered after effective date of guidelines. Code 1950, § 20-108.—*Crabtree v. Crabtree*, 435 S.E.2d 883, 17 Va.App. 81.—Child S 337, 356.

MATERIAL CHANGE IN CONDITION

Wash.App. Div. 1 1974. “Material change in condition,” such as would justify change in visitation orders in divorce decree, can be deemed to occur where provision in the original decree anticipates cooperation and that cooperation is not forthcoming.—*Selivanoff v. Selivanoff*, 529 P.2d 486, 12 Wash.App. 263.—Child C 577.

MATERIAL CHANGE IN CONDITIONS

C.A.7 1991. For purposes of regulation providing that second application for black lung benefits, filed after first application was finally denied, may be granted only if there has been material change in conditions, “material change in conditions” means either that miner did not have black lung

disease at time of first application but has since contracted it and become totally disabled by it, or that disease has progressed to point of becoming totally disabling although it was not at time of first application; it is not enough that new application is supported by new evidence of disease or disability because the evidence might show merely that original denial was wrong and would thereby constitute impermissible collateral attack on denial. Federal Mine Safety and Health Act of 1977, § 401 et seq., as amended, 30 U.S.C.A. § 901 et seq.—*Sahara Coal Co. v. Office of Workers Compensation Programs*, U.S. Dept. of Labor, 946 F.2d 554.—Labor 27.1.

MATERIAL CHANGE IN CONDITIONS AND CIRCUMSTANCES

Ga. 1962. Divorced father's oral expression that if mother gave consent to adoption of child by specified individuals, and if both he and mother believed that this was for child's best interest, he would then consent, did not constitute "material change in conditions and circumstances" authorizing changing custody to the mother.—*Hunnicut v. Smith*, 127 S.E.2d 375, 218 Ga. 282.—Child C 555.

MATERIAL CHANGE IN ORGANIZATION

Alaska 1983. Under city personnel ordinance provision relating to layoffs, collective bargaining agreement negotiated between city and union did not constitute "material change in organization," so as to justify layoff of employees, when only change that occurred as result of bargaining agreement was that employees hired during strike to replace strikers were terminated to allow strikers to go back to work.—*Stanfill v. City of Fairbanks*, 659 P.2d 579.—Mun Corp 218(3).

MATERIAL CHANGE OF CIRCUMSTANCES

Ala.Civ.App. 1997. Increase in age of minor child and correlative need for support, coupled with an increase in cost of living due to inflation, are sufficient to constitute "material change of circumstances" and to sustain modification of child support.—*Berryhill v. Reeves*, 705 So.2d 505.—Child S 290, 292.

Alaska 1998. Children's moves into ex-husband's home, for approximately ten-month period during which he and ex-wife litigated changes to their original child custody and support orders, were sufficiently permanent to qualify as "material change of circumstances," justifying modification of child support order to require wife to pay support for that period, even though children's moves were based on parties' informal, voluntary physical custody arrangement, rather than court-ordered arrangement. Rules Civ.Proc., Rule 90.3(h)(1).—*Boone v. Boone*, 960 P.2d 579.—Child S 236.

Alaska 1997. Former wife's improved employment situation was not, standing alone, per se "material change of circumstances," nor did it return former husband to the minimum requirements of child support guidelines and excuse him from terms of the support agreement incident to divorce; however, it was a factor to be considered in deter-

mining whether to modify support. Rules Civ. Proc., Rule 90.3(h)(1).—*Flannery v. Flannery*, 950 P.2d 126, rehearing denied.—Child S 240; Hus & W 279(2).

Alaska 1997. Change in party's legal theory is not a "material change of circumstances" that warrants modification of child support order. Rules Civ.Proc., Rule 90.3(h)(1).—*Bunn v. House*, 934 P.2d 753.—Child S 234.

Alaska 1997. Former wife's proposed new method for determining proper level of former husband's child support obligation was not a "material change of circumstances" that warranted modification of child support order; new method was not based on any change in facts or law, and wife could have appealed from original child support order if she believed that order was erroneous. Rules Civ. Proc., Rule 90.3(h)(1).—*Bunn v. House*, 934 P.2d 753.—Child S 234.

Kan. 1998. "Material change of circumstances," such as will warrant a change in child custody, is one that must be of a substantial and continuing nature to make the terms of the initial decree unreasonable. K.S.A. 60-1610(a).—*Matter of Marriage of Whipp*, 962 P.2d 1058, 265 Kan. 500.—Child C 556.

Neb. 2002. In the context of marital dissolutions, a "material change of circumstances" means the occurrence of something which, had it been known to the dissolution court at the time of the initial decree, would have persuaded the court to decree differently.—*Gallner v. Hoffman*, 653 N.W.2d 838, 264 Neb. 995.—Divorce 164.

Neb. 1999. In context of marital dissolutions, "material change of circumstances" means occurrence of something which, had it been known to dissolution court at the time of initial decree, would have persuaded court to decree differently.—*Rauch v. Rauch*, 590 N.W.2d 170, 256 Neb. 257.—Divorce 164.

Neb. 1999. Among factors to be considered in determining whether "material change of circumstances", warranting modification of child support provision of dissolution decree, has occurred are changes in financial position of parent obligated to pay support, needs of children for whom support is paid, good or bad faith motive of obligated parent in sustaining reduction in income, and whether change is temporary or permanent.—*Rauch v. Rauch*, 590 N.W.2d 170, 256 Neb. 257.—Child S 254, 259, 290.

Neb. 1998. In context of marital dissolutions, "material change of circumstances" means occurrence of something which, had it been known to dissolution court at time of initial decree, would have persuaded court to decree differently.—*Swenson v. Swenson*, 575 N.W.2d 612, 254 Neb. 242.—Divorce 164.

Neb. 1996. In context of marital dissolutions, "material change of circumstances" means occurrence of something which, had it been known to dissolution court at time of initial decree, would have persuaded court to decree differently.—*Sulli-*

van v. Sullivan, 544 N.W.2d 354, 249 Neb. 573.—Child C 555; Child S 234; Divorce 245(2).

Neb. 1986. A “material change of circumstances” warranting modification of decree fixing custody of minor children is something that has occurred which, if trial court had been aware of its existence initially, court, considering the best interests of the children, would have granted custody to the other parent.—Hicks v. Hicks, 388 N.W.2d 510, 223 Neb. 189.—Child C 556.

Neb.App. 2000. Upward revision of the Child Support Guidelines was a “material change of circumstances” that warranted upward modification of former husband’s child support obligation, independent of changes in his income. Neb.Rev.St. § 43–512.12.—Sneckenberg v. Sneckenberg, 616 N.W.2d 68, 9 Neb.App. 609.—Child S 356.

Neb.App. 2000. In the context of marital dissolutions, a “material change of circumstances” means the occurrence of something which, had it been known to the dissolution court at the time of the initial decree, would have persuaded the court to decree differently. Neb.Rev.St. § 43–512.12.—Sneckenberg v. Sneckenberg, 616 N.W.2d 68, 9 Neb.App. 609.—Child C 556; Child S 234; Divorce 245(2).

N.Y.Dom.Rel.Ct. 1949. Substitution of new counsel does not constitute a “material change of circumstances” justifying modification of order for support of wife.—Brown v. Brown, 87 N.Y.S.2d 105, 194 Misc. 975.—Hus & W 315(3).

S.C.App. 1993. Income reduction of former husband, an anesthesiologist, from over \$300,000 per year to somewhat more than \$180,000 per year after his “involuntary resignation” from hospital, even taken with increase in former wife’s earned income, was not “material change of circumstances” warranting modification of alimony or child support; his income was still enough that he was able to pay alimony and support children without reducing standard of living he enjoyed during marriage, while wife’s standard of living, although comfortable, was less than it was during marriage.—Kielar v. Kielar, 429 S.E.2d 851, 311 S.C. 466.—Divorce 245(2).

Tex.App.—San Antonio 1984. Mother’s remarriage was “material change of circumstances” for purposes of inquiry into whether change in custody was warranted.—Kimbrell v. Donnell, 672 S.W.2d 307.—Child C 567.

Va.App. 1999. “Material change of circumstances,” warranting modification of mother’s child support obligation, occurred when she completed her educational training post-divorce and was available for gainful employment.—Blackburn v. Michael, 515 S.E.2d 780, 30 Va.App. 95.—Child S 277.

Va.App. 1999. “Material change of circumstances” occurred when former wife completed her educational training post-divorce and was available for gainful employment; thus, because evidence showed that wife was underemployed, trial court erred by refusing to impute income to wife for purposes of determining whether to modify hus-

band’s spousal support obligation, which was set forth in property settlement agreement incorporated by reference into divorce decree. Code 1950, § 20–109, subds. A, C.—Blackburn v. Michael, 515 S.E.2d 780, 30 Va.App. 95.—Hus & W 279(2).

MATERIAL CHANGE OF CIRCUMSTANCES AFFECTING THE WELFARE OF THE CHILDREN

Iowa App. 1996. Unjustified disruption of visitation schedule established in original custody decree may be a “material change of circumstances affecting the welfare of the children” and warranting custody modification.—Dale v. Pearson, 555 N.W.2d 243.—Child C 556.

MATERIAL CHANGE OR ALTERATION

Cal.App. 1 Dist. 1916. Under (West’s Ann.) Code Civ.Proc. § 1982, requiring the party producing a writing as genuine, which has been or appears to have been altered after its execution in a part material to the question in dispute, to account for the appearance of the alteration by showing that it was made by another without his consent, or was made innocently, or that it did not change the meaning or language of the instrument, a “material change or alteration” is one causing an instrument to speak a language different in legal effect from that which it originally spoke, or which remedies a defective instrument; and in an affidavit for a change of venue reading, “I further say that I have fully and fairly the said case in this cause to my counsel,” etc., the insertion of the word “stated” after its execution to supply no more than the court would have supplied for him was immaterial.—Cavitt v. Raje, 156 P. 519, 29 Cal.App. 659.

MATERIAL CIRCUMSTANCES

Minn.App. 1996. Alleged father’s identity and pending paternity suit in different state were not “material circumstances” in adoption proceeding, and, therefore, failure to disclose them was not “fraud upon the court,” where alleged father had not complied with any of the statutory provisions that would have entitled him to notice of adoption proceeding.—In re C.M.A., 557 N.W.2d 353, review denied.—Adop 16.

MATERIAL CIRCUMSTANCES * * * AFFECTING THE SUBDIVIDED LAND

Alaska 1979. Though the presence of permafrost is an important physical characteristic and one of the “material circumstances * * * affecting the subdivided land” for purposes of the Land Sales Practices Act, so that failure to disclose the existence of permafrost in a public offering statement can result in civil liability under the Act, such liability does not attach if the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the failure to disclose. AS 34.55.008, 34.55.012(a), 34.55.030.—Stepanov v. Gavrilovich, 594 P.2d 30.—Cons Prot 8.

MATERIAL COMPENSATION

Kan. 1937. Where one member of county bridge crew was in charge of truck used to transport crew to and from work, and he received no extra pay for driving truck, except his transportation to and from his home, such transportation was "material compensation" to truck driver, and hence he could not set up as defense to action against him for death of member of crew from his negligent driving, that member was a "guest" within meaning of guest statute. Gen.St.1935, 8-122b.—Elliott v. Behner, 73 P.2d 1116, 146 Kan. 827.—Autos 181(2).

MATERIAL, COMPOUND, MIXTURE, OR PREPARATION

Tex.Crim.App. 1992. Statutes in effect prior to September 1, 1989, proscribing "Unlawful Manufacture" of controlled substance contemplated finished product and punishment is graded by amount of controlled substance manufactured, and thus by-products, waste materials, unused precursors, etc. should not be part of definition of controlled substance in manufacturing case and "material, compound, mixture, or preparation" must be in usable form in order to be "controlled substance" in manufacturing case; if substance is not usable, it has either not been fully manufactured, in which case charge may be made of attempted manufacture, or else it is not controlled substance, such as in the case of sludge or waste. (Per Miller, J., with two Judges concurring, three Judges concurring in result, and one Judge concurring in judgment.) Vernon's Ann.Texas Civ.St. art. 4476-15, §§ 4.02(d)(1)(A), 4.032(a, c) (Repealed).—Dowling v. State, 885 S.W.2d 103, rehearing granted, and decision clarified on rehearing.—Controlled Subs 22.

MATERIAL CONCEALMENT

N.Y. 1931. Insured's concealment of facts is "material concealment," if underwriter with full information would have refused risk.—Sebring v. Fidelity-Phenix Fire Ins. Co. of New York, 174 N.E. 761, 255 N.Y. 382.—Insurance 2964.

N.Y. 1931. Undisclosed fact need not be of such nature as to have increased risk to constitute "material concealment."—Sebring v. Fidelity-Phenix Fire Ins. Co. of New York, 174 N.E. 761, 255 N.Y. 382.—Insurance 2964.

MATERIAL CONDITION

M.D.Pa. 1942. Clause in automobile liability policy requiring insured to cooperate with insurer in defense of action for damages resulting from operation of specified automobile constituted a "material condition" of the policy upon compliance with which insurer's liability under the policy was dependent.—Associated Indem. Corp. v. Davis, 45 F.Supp. 118, reversed 136 F.2d 71.—Insurance 3202.

MATERIAL CONFLICT

S.D.N.Y. 2002. Laws are in "material conflict" if the differences in the laws have a significant possible effect on the outcome of the trial.—Hidden Brook Air, Inc. v. Thabet Aviation Intern. Inc., 241 F.Supp.2d 246.—Action 17.

MATERIAL CONNECTION

C.A.2 (N.Y.) 1994. There was "material connection" between commercial activity of banking entities owned by Republic of Iraq in United States and foreign lender's action for breach of loan agreements, as required to apply commercial activity exception to Foreign Sovereign Immunities Act (FSIA), despite foreign lender's reliance on agent to collect sums due. Foreign Sovereign Immunities Act, 28 U.S.C.A. § 1605(a)(2).—Commercial Bank of Kuwait v. Rafidain Bank, 15 F.3d 238.—Intern Law 10.34.

MATERIAL CONSIDERATION

Minn. 1967. For purpose of awarding damages for fraud, a water problem in basement is matter of "material consideration" to a prospective home purchaser.—Sawyer v. Tildahl, 148 N.W.2d 131, 275 Minn. 457.—Fraud 60.

MATERIAL CONTRACT

Mo.App.E.D. 1993. Business seller's earlier memorandum of understanding with former partner allegedly prohibiting seller from competing with former partner in certain areas was "material contract" which seller was expressly required to disclose under asset purchase agreement with business purchaser; thus, because seller did not disclose it, and because asset purchase agreement gave purchaser right to withhold or offset amounts owed due to breach of representations in that agreement, purchaser properly withheld from seller attorney fees purchaser incurred in action by seller's former partner against purchaser for seller's breach of memorandum while employed by purchaser.—Orthotic & Prosthetic Lab, Inc. v. Pott, 851 S.W.2d 633, rehearing, transfer denied, and transfer denied.—Sales 85(1).

MATERIAL CONTRIBUTING CAUSE

Or.App. 1984. "Material contributing cause" need not be sole or principal cause of compensable work-related injury.—Coddington v. State Acc. Ins. Fund Corp., 681 P.2d 799, 68 Or.App. 439.—Work Comp 597.

MATERIAL CONTRIBUTION

Pa.Cmwlt. 1978. In decision of Commonwealth Court that workmen's compensation may be had if injured eye "does not contribute materially" to claimant's vision in conjunction with uninjured eye, "material contribution" was intended to mean a net gain or benefit, taking into consideration all of the good and bad effects that use of the injured eye had on claimant's total vision. 77 P.S. § 513(7).—Steele v. Workmen's Compensation Appeal Bd., 387 A.2d 1339, 36 Pa.Cmwlt. 352.—Work Comp 896.

MATERIAL CONTROVERSY

D.Puerto Rico 1986. Party opposing a motion for summary judgment must present proffer of evidence sufficient to establish that there exists genuine issues on material controversies of fact which, if established at trial, would entitle that party to prevail on the merits; a "material controversy" is one which affects the outcome of the litigation or one which has some legal significance to the asserted claims. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Lipsett v. University of Puerto Rico, 637 F.Supp. 789, reversed 864 F.2d 881, appeal after remand 759 F.Supp. 40.—Fed Civ Proc 2470.1, 2544.

MATERIAL CREATED IN PREPARATION FOR LITIGATION

N.Y.A.D. 2 Dept. 1967. Report of physician who had examined X rays of infant plaintiff was "material created in preparation for litigation" within disclosure statute and was not subject to disclosure. CPLR §§ 3101, subd. (d), par. 2, 3121.—Freiman v. Miller, 284 N.Y.S.2d 225, 28 A.D.2d 1126.—Damag 206(5).

MATERIAL CROSS-DEFENDANT

Tenn.Ct.App. 1937. In suit by receiver of insolvent bank to recover stock assessments, wherein stockholder filed cross-bill which contained merely defensive allegations and did not seek affirmative relief, and sought issuance of process requiring receiver to answer, though not on oath, receiver was not a "material cross-defendant" within statute and court had jurisdiction to try issues, notwithstanding failure to serve process on receiver and receiver's failure to answer. Code 1932, §§ 10401–10403.—McDowell v. Rambo, 111 S.W.2d 892, 21 Tenn.App. 448.—Banks 250(4).

MATERIAL DAMAGE

N.D. 1941. "Damage" to crop, rendering it uninsurable under state hail insurance act, means substantial damage, some injury by which value is diminished or destroyed, an actual injury not determined by percentage merely, but a damage that is visible, observable, and material. Laws 1933, c. 137, §§ 2, 5. The word "damage" is synonymous with "loss." "Loss" is the generic term. "Damage" is a species of "loss." "Material damage" means an actual injury.—Glinz v. State, 298 N.W. 238, 70 N.D. 776.

MATERIAL DECEPTION

Ohio 1993. Evidence supported finding of State Dental Board that dentist violated statutory disciplinary rule prohibiting attempting to obtain money by intentional misrepresentation or material deception; dentist billed for assistant surgeon when no one fitting that description appeared on hospital records and billing for nonexistent assistant constituted, at the very least, "material deception," if not intentional misrepresentation. R.C. § 4715.30(A)(2).—Blazic v. Ohio State Dental Bd., 611 N.E.2d 802, 66 Ohio St.3d 240, 1993-Ohio-112.—Health 209.

MATERIAL DEFAULT

1st Cir.BAP (R.I.) 2000. Chapter 13 debtors were in "material default" with respect to term of their confirmed plan, so as to permit dismissal of case which had been pending for more than five years, even though they had made all monthly payments called for in plan for requisite 60-month period, where plan also required debtors to pay all postpetition taxes and to provide 10% dividend to unsecured creditors, and where, due to large post-petition tax claim filed by the Internal Revenue Service (IRS), debtors' payments to trustee were insufficient to pay taxes and to provide required 10% dividend. Bankr.Code, 11 U.S.C.A. § 1307(c)(6).—In re Roberts, 279 B.R. 396, affirmed 279 F.3d 91.—Bankr 3716.30(6).

Bkrty.E.D.N.Y. 2002. Chapter 11 debtor's failure to close at time specified in executory contract for purchase of shares in corporation constituted "material default" that prevented debtor from enforcing contract, where parties had made time of the essence, even though contract did not provide that failure to close resulted in termination. Bankr. Code, 11 U.S.C.A. § 365(b)(2)(D).—In re New Breed Realty Enterprises, Inc., 278 B.R. 314.—Bankr 3114.

Bkrty.S.D.Ohio 1986. Debtor's failure to make payments to trustee in accordance with Chapter 13 plan was not "material default," such as would constitute "cause" for granting secured creditor relief from stay, where default was caused solely by breakdown of tractor in which creditor held security interest, where all of debtor's available income during period of default was used to repair tractor, and where value of tractor was in excess of creditor's remaining secured claim. Bankr.Code, 11 U.S.C.A. § 362(d)(1).—In re Durben, 70 B.R. 14.—Bankr 2423.

Hawai'i App. 1993. Tenant's failure to maintain adequate records of its sales in accordance with terms of percentage lease was "material default," such as might permit court to exercise its remedies under lease.—4000 Old Pali Road Partners v. Lone Star of Kauai, Inc., 862 P.2d 282, 10 Haw.App. 162, certiorari granted 863 P.2d 989, 75 Haw. 581, appeal dismissed 868 P.2d 464, 76 Hawai'i 246.—Land & Ten 200.3.

Mass. 1947. Where employee agreed to "devote all of his time, attention and energy to the duties" of his employment, employee's concealed interest in and partial employment by employer's competitor constituted a "material default" within employment contract justifying employer in terminating the employment.—Walsh v. Atlantic Research Associates, 71 N.E.2d 580, 321 Mass. 57.—Mast & S 30(2).

MATERIAL DEFECT

Cl.Ct. 1989. Ambiguity in would-be government contractor's bid, as to whether entity making bid was corporation or joint venture, was a "material defect" which could not be corrected.—Honeywell, Inc. v. U.S., 16 Cl.Ct. 173, reversed 870 F.2d 644.—U S 64.30.

Ill.App.5 Dist. 1980. "Material defect" in title to land is such defect as will cause reasonable doubt and just apprehension in mind of reasonable, prudent, and intelligent person, acting upon competent legal advice, and prompt him to refuse to take the land at fair value.—*Wilfong v. W. A. Schickedanz Agency, Inc.*, 40 Ill.Dec. 625, 406 N.E.2d 828, 85 Ill.App.3d 333.—*Ven & Pur* 130(2).

N.J.Super.A.D. 2000. Failure of lowest bidder for public contract to provide plumbing services for county improvement authority to comply with the statutory requirement of submitting with the bid a statement showing that a licensed master plumber owned at least 10 percent of the bidding entity's stock was a "material defect" in the bid. N.J.S.A. 45:14C-2(h), 52:25-24.2.—*Muirfield Const. Co., Inc. v. Essex County Improvement Authority*, 763 A.2d 1272, 336 N.J.Super. 126.—*Counties* 118.

Utah 2002. Unstable condition of soil on building lot, which subsequently caused substantial damage to home built there, was a defect that a purchaser or vendor of ordinary intelligence and prudence would think to be of some importance in determining whether to buy a home, and thus amounted to a "material defect" that listing real estate broker and agent had legal duty to disclose.—*Hermansen v. Tasulis*, 48 P.3d 235, 2002 UT 52.—*Fraud* 17.

Wis. 1931. "Material defect" is such as will cause reasonable doubt in mind of reasonably prudent and intelligent person, acting upon competent legal advice, and prompt him to refuse to accept title.—*Douglass v. Ransom*, 237 N.W. 260, 205 Wis. 439.—*Ven & Pur* 130(2).

MATERIAL DEFECT OR ALTERATION

Fed.Cl. 1995. Forged drawer signature is not "material defect or alteration" within meaning of regulation permitting United States Department of Treasury to reclaim amounts paid on checks determined to contain material defect or alteration that was not discovered upon first examination. 31 C.F.R. § 240.6(a)(2).—*ABN Amro Bank N.V. v. U.S.*, 34 Fed.Cl. 126.—*U S* 89.

MATERIAL DEFENDANT

Ala. 1998. In insured's suit to recover damages from alleged tort-feasor and uninsured or underinsured motorist (UM/UIM) benefits, automobile insurer was "material defendant" making venue proper in county in which it did business as foreign insurer. Code 1975, §§ 6-3-5(a), 6-3-7.—*Ex parte Boles*, 720 So.2d 911.—*Venue* 22(3).

Ala. 1992. Title insurance company was "material defendant" for purposes of venue in suit brought by owner of undeveloped land on island for which title company issued title insurance policy, and thus, venue was proper in county in which title insurance company was located, where owner's suit asserted that either association of property owners on island was liable for violating covenants in deed by inhibiting access to property by sole bridge to island or that title company was liable for insuring that covenants were valid. Rules Civ.Proc., Rule

82(c).—*Ex parte Property Owners Ass'n of Ono Island, Inc.*, 597 So.2d 202.—*Decl Judgm* 271.

Ala. 1983. A "material defendant," within meaning of rule of civil procedure providing that actions against resident individuals of state must be brought in county where defendant or any material defendant resides at commencement of action, is one whose position is antagonistic to that of plaintiffs because relief is sought against him. Rules Civ.Proc., Rule 82(b)(1)(A).—*Ex parte Ford*, 431 So.2d 1194.—*Venue* 22(3).

Ala. 1980. Under venue rule, providing that actions against resident individuals must be brought in county where any material defendant resides at the commencement of the action, a "material defendant" is one whose position is antagonistic to that of the plaintiffs because relief is sought against him. Rules of Civil Procedure, Rules 82, 82(b)(1)(A), (c), 82 comment.—*Ex parte Maness*, 386 So.2d 429.—*Venue* 22(3).

Ala. 1977. For purposes of establishing venue jurisdiction, a "material defendant" is one whose position is antagonistic to that of the plaintiffs because relief is sought against him.—*Alabama Youth Services Bd. v. Ellis*, 350 So.2d 405.—*Venue* 22(3).

Ala. 1938. A "material defendant," within statute authorizing a will contest in county in which a material defendant resides, is one whose interest is antagonistic to complainant's and against whom relief is prayed. Code 1940, Tit. 61, § 64.—*Cook v. Morton*, 181 So. 904, 236 Ala. 237.—*Wills* 258.

Ala. 1931. "Material defendant," within venue statute, is not mere nominal party, but is defendant who is necessary party really interested, and against whom decree is sought (Code 1923, § 6524).—*Ex parte Fairfield-American Nat. Bank*, 135 So. 447, 223 Ala. 252.—*Venue* 22(3).

Ala. 1921. Though Code 1907, § 3093, provides that a "bill must be filed in the district in which a material defendant resides," a bill may be filed in the district in which a proper defendant resides when no material defendant resides within the state; a "material defendant" being one who is a necessary party.—*J.H. Scruggs Const. Co. v. Coosa County*, 89 So. 527, 206 Ala. 137.—*Venue* 22(3).

Ala. 1918. The Supreme Court must assume that the Legislature, in adopting the various Codes containing the words "material defendant," as used in Code 1907, § 6207, providing venue of bill to contest will, intended to apply the well-known meaning given by the court in dealing with the general statute as to venue in chancery cases.—*Crawford v. Walter*, 80 So. 73, 202 Ala. 235.—*Statut* 212.6.

Ala. 1918. Despite Code 1907, § 6196, in suit to contest will by heir on intestacy, another like heir or distributee, had there been an intestacy, was not a "material defendant" within section 6207, authorizing filing of such bill in district in which such a defendant resides, though not that in which will was probated, and bill should have been filed in district

of probate.—*Crawford v. Walter*, 80 So. 73, 202 Ala. 235.—*Wills* 258.

Ga. 1906. A “material defendant,” within the meaning of the statute, requiring that an original bill be filed in the district in which the defendants or a “material defendant” reside, has been held to be a defendant who is a necessary party, really interested in the result of the suit and against whom a decree is sought; one whose interest is antagonistic to the complainants and against whom relief is prayed.—*Railroad Commission of Georgia v. Palmer Hardware Co.*, 53 S.E. 193, 124 Ga. 633.

MATERIAL DEFENDANTS

E.D.Tenn. 1940. Where there had been no order from a state authority requiring compliance with statute and, under proof, employer’s manager and foreman had no authority to change structural conditions at place of employment, manager and foreman, who were residents of Tennessee, were not “material defendants” in employee’s action against employer, a nonresident corporation, and manager and foreman for damages claimed as result of disease being contracted by employee breathing unhealthy fumes due to alleged failure of defendants to furnish a safe working place as required by common law and Tennessee statute, and hence federal District Court had jurisdiction of action. Code Tenn.1932, ss 5339-5341, 5345.—*Whittle v. Atlas Powder Co.*, 34 F.Supp. 563.—*Fed Cts* 289.

Ala. 1983. Defendants who were dismissed from lawsuit pursuant to a pro tanto settlement were “material defendants” within meaning of rule of civil procedure providing that actions against resident individuals of state must be brought in county where defendant or any material defendant resides at commencement of action, and thus venue in county where those defendants were doing business by agent at time cause of action arose was proper; complaint stated valid claim for relief against those defendants, and defendants paid money to them under pro tanto settlements. Rules Civ.Proc., Rule 82(b)(1)(A).—*Ex parte Ford*, 431 So.2d 1194.—*Venue* 22(6).

Ala. 1944. Where bill by trustees of a trust consisting of land had for its purpose the determining of rights of the several parties who had acquired interests through beneficiaries named in trust and for an accounting, subject matter of the bill was not the lands, and third persons who resided in counties other than those in which lands were situated, and who were claiming under some of beneficiaries, were “material defendants”, so as to authorize laying of venue in county of their residence. Code 1940, Tit. 7, §§ 128, 294.—*Wilson v. Wilson*, 20 So.2d 452, 246 Ala. 346.—*Venue* 22(6).

Ala. 1938. A bill to contest will was properly filed in county other than one wherein will was probated, where two of respondents who resided in county where bill was filed were given an interest in the estate under will, and not being heirs of testator their interest would be wiped out by successful contest of will, and hence were “material defen-

dants” within statute authorizing will contest in county in which a material defendant resides. Code 1940, Tit. 61, § 64.—*Cook v. Morton*, 181 So. 904, 236 Ala. 237.—*Wills* 258.

MATERIAL DEGREE

Iowa 1904. The words “material degree,” in an instruction, in an action for injuries, to the effect that if the plaintiff was injured as the direct result of defendant’s negligence, and was “in no manner or to any material degree negligent himself, or in no manner or to any extent contributed to his own injury,” he was entitled to recover, related to the amount of care required, and not to the extent of contribution to the injury by reason of failure to exercise such care, and hence the instruction was not erroneous.—*Camp v. Chicago Great Western R. Co.*, 99 N.W. 735, 124 Iowa 238.

N.J. 2003. Term “material degree” means a degree substantially greater than de minimis as that term is used in workers’ compensation statute defining “compensable occupational diseases” as those diseases established by a preponderance of the credible evidence to have arisen out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment. N.J.S.A. 34:15-31, subd. a.—*Williams v. Port Authority of New York and New Jersey*, 813 A.2d 531, 175 N.J. 82.—*Work Comp* 1530.

N.J. 1995. “Material degree” standard in workers’ compensation statute, providing that compensable occupational disease includes all diseases arising out of and in the course of employment which are due in “material degree” to causes which are characteristic of or peculiar to a particular occupation, imposes on claimant a burden to show a greater nexus between the malady and the employment. N.J.S.A. 34:15-31.—*Fiore v. Consolidated Freightways*, 659 A.2d 436, 140 N.J. 452.—*Work Comp* 1364.

N.J.Super.A.D. 1999. Statutory requirement to link the place of employment with occupational disease by a “material degree” requires workers’ compensation claimant to show the nexus by an appreciable degree or a degree substantially greater than de minimis; facts of the situation in their totality must demonstrate causality by the greater weight of credible evidence. N.J.S.A. 34:15-31.—*Magaw v. Middletown Bd. of Educ.*, 731 A.2d 1196, 323 N.J.Super. 1, certification denied 744 A.2d 1208, 162 N.J. 485.—*Work Comp* 548.

MATERIAL DEPARTURE

Conn. 1942. Where complaint alleged that defendant opened door of his parked car against a passing truck with such force that plaintiff, riding thereon, was thrown around and his legs swung over the side where struck by the door, proof and findings that plaintiff’s right leg was at all times outside the truck resting on a ledge did not constitute a “material departure” from the allegations, but was at most a “variance”.—*Keheley v. Uhl*, 26

A.2d 357, 129 Conn. 30.—Autos 240(3); Trial 396(2).

Iowa 1997. “Material departure” from statutory requirements for drawing jury, which is necessary to successfully challenge process for selecting jury panel, is one of real importance or great consequence; any departure from statutory requirements that does not frustrate goal of attaining fair cross-section of community is not material. I.C.A. § 607A.6; I.C.A. § 813.2, Rule 17, subd. 3.—State v. Chidester, 570 N.W.2d 78.—July 33(1.1), 66(1).

Nev. 1909. On September 25th the court ordered the issuance of a venire of 150 names, returnable on October 5th, and names to that number were regularly drawn and the venire issued. On September 30th, the court vacated the order of September 25th, and directed that the names in the venire then in process of being served be restored to the trial jury box, and that 150 names be drawn from the trial jury box, and a venire issued for those persons to attend October 7th to complete the panel in the case; seven jurors having been passed. Thereafter on the same date the 150 names were returned to the box, and the judge and clerk of court drew therefrom 150 names to complete the panel, and a venire was issued to serve the names so drawn. Held that, conceding irregularity, there was not a “material departure” from the forms provided by statute, expressly made ground for challenge to the panel by Comp.Laws Nev. § 4288; “material departures” being only such as affect the substantial rights of a defendant in securing an impartial jury.—State v. Jackman, 104 P. 13, 31 Nev. 511.

Or. 2002. “Material departure,” under statute allowing district attorney or criminal defendant to challenge jury panel by filing motion supported by affidavit alleging facts that, if true, constitute a material departure from requirements of law governing selection of jurors, means that affidavit must allege facts that, if true, constitute a deviation of great consequence from constitutional or statutory procedures that govern selection of jurors. ORS 136.005(1).—State v. Rogers, 55 P.3d 488, 334 Or. 633.—July 120.

MATERIAL DEPARTURES

Cal.App. 1 Dist. 1964. “Material departures” from statutes, which may be successful ground for challenge of jurors, are only those that affect substantial rights of defendant in securing a partial jury. West’s Ann.Code Civ.Proc. §§ 225, 246, 248.—Miraglia v. Callison, 37 Cal.Rptr. 837, 226 Cal.App.2d 177.—July 116.

Idaho 1931. “Material departures” are only such as affect substantial rights of defendant in securing an impartial jury (C.S. § 8915).—State v. McClurg, 300 P. 898, 50 Idaho 762.—July 82(2).

Idaho 1931. Errors complained of in challenge to jury, including failure of clerk to enter exception to challenge in minutes, held not “material departures” prejudicing defendant in murder case (C.S. § 8915).—State v. McClurg, 300 P. 898, 50 Idaho 762.—July 82(2).

Nev. 1909. On September 25th the court ordered the issuance of a venire of 150 names, returnable on October 5th, and names to that number were regularly drawn and the venire issued. On September 30th, the court vacated the order of September 25th, and directed that the names in the venire then in process of being served be restored to the trial jury box, and that 150 names be drawn from the trial jury box, and a venire issued for those persons to attend October 7th to complete the panel in the case; seven jurors having been passed. Thereafter on the same date the 150 names were returned to the box, and the judge and clerk of court drew therefrom 150 names to complete the panel, and a venire was issued to serve the names so drawn. Held that, conceding irregularity, there was not a “material departure” from the forms provided by statute, expressly made ground for challenge to the panel by Comp.Laws Nev. § 4288; “material departures” being only such as affect the substantial rights of a defendant in securing an impartial jury.—State v. Jackman, 104 P. 13, 31 Nev. 511.

MATERIAL DEVIATION

C.A.7 (Ind.) 1965. Recommended loan for which broker had obtained commitment but which was \$50,000 less than that broker was employed to obtain, which would mature three years earlier and required an annual debt service of \$150,375 constituted “material deviation” from loan requested so that broker was not entitled to a commission.—Huber v. Ryan, 347 F.2d 712.—Brok 49(3).

Kan.App. 1994. “Material deviation” from standard of care required for conviction of vehicular homicide requires conduct amounting to something more than ordinary or simple negligence yet something less than gross and wanton negligence. K.S.A. 21–3405(1) (1992).—State v. Trcka, 884 P.2d 434, 20 Kan.App.2d 84.—Autos 342.1.

Mass. 1942. Where construction of highway guard railing required subcontractor to install 1,505 posts made of concrete and reinforced by four steel rods, and 12 of the posts when tested were found to contain two rods, which posts were replaced by posts which were reinforced by four rods, and no excuse for constructing defective posts was shown, the omission of rods from posts was a “material deviation” from contract precluding recovery of balance allegedly due, notwithstanding that neither contractor nor Department of Public Works had actual knowledge that remaining posts had less than four rods each.—Russo v. Charles I. Hosmer, Inc., 44 N.E.2d 641, 312 Mass. 231.—Contracts 296.

N.J.Sup. 1942. Where the regular driver of delivery truck had made his last delivery and, due to an injured hand which handicapped his driving, requested another to drive and on the way home by way of other driver’s home, which was not the shortest nor most practicable route, an accident occurred resulting in injuries to plaintiffs the question whether there was such a “material deviation” as to amount to an abandonment of employer’s business was a question for the jury.—Wasserman

v. Schnoll, 28 A.2d 883, 129 N.J.L. 224, affirmed 31 A.2d 820, 130 N.J.L. 176.—Autos 245(31).

N.C. 1967. Bailee's use of borrowed automobile in such a manner that he became involved in accident ten hours after expiration of time limit owner had placed on use of automobile was a "material deviation" from the grant of permission so that bailee was not covered under omnibus clause of owner's automobile policy which extended coverage to bailee for accidents occurring while automobile was operated by bailee within scope of owner's permission. G.S. § 20-279.21(b) (2).—Wilson v. Hartford Acc. & Indem. Co., 158 S.E.2d 1, 272 N.C. 183.—Insurance 2667.

Ohio App. 2 Dist. 1991. Absence of signature on affirmative action statement of bid on public contract did not constitute "material deviation" and thus, did not render bid nonresponsive. R.C. § 9.312(A).—Kokosing Constr. Co. v. Dixon, 594 N.E.2d 675, 72 Ohio App.3d 320.—Pub Contr 8.

S.D. 1997. It was "material deviation" from automobile owner's permission, as required to make driver a permissive user under omnibus clause of automobile policy defining "insured" as any other person whose use of automobile is "within the scope of consent" of owner or owner's spouse, for owner's son, who had been given permission to use automobile provided he did not let anyone else drive it, to nonetheless give another permission to drive automobile, since objective of permission granted by owner was that his son use automobile temporarily, not that another be allowed to drive automobile. SDCL 32-35-70.—State Farm Mut. Auto. Ins. Co. v. Ragatz, 571 N.W.2d 155, 1997 SD 123.—Insurance 2666, 2667.

MATERIAL DEVIATION DOCTRINE

S.D.N.Y. 1999. Under the "material deviation doctrine," in cases of shipment by air, rail, and truck in which the shipper paid an additional charge to ensure specialized safety measures to reduce the risk of damage to its cargo, the carrier's failure to perform those very measures which resulted in damage to the cargo is a sufficient basis upon which the liability limitation in the shipping agreement may be rescinded.—Nippon Fire & Marine Ins. Co., Ltd. v. Skyway Freight Systems, Inc., 67 F.Supp.2d 293, affirmed in part, appeal dismissed in part 235 F.3d 53.—Carr 156(2).

S.D. Ohio 2001. The "material deviation doctrine," which is derived from admiralty law, provides that a contractual limitation of liability will not restrict a shipper's recovery if the carrier has breached a material provision.—The Limited, Inc. v. PDQ Transit, Inc., 160 F.Supp.2d 842.—Carr 156(2).

MATERIAL DEVIATION FROM THE STANDARD OF CARE

Kan. 2002. A "material deviation from the standard of care," as required to support conviction for vehicular homicide, is conduct amounting to more than simple or ordinary negligence and yet it is conduct not amounting to gross and wanton negli-

gence; it is determined on a case by case basis based upon the totality of the circumstances. K.S.A. 21-3405.—State v. Krovvidi, 58 P.3d 687.—Autos 342.1.

MATERIAL DEVIATION STANDARD

La.App. 2 Cir. 1999. Louisiana Products Liability Act's (LPLA) "material deviation standard" encompasses that a product is unreasonably dangerous when an unintended defect makes the product more dangerous than it is designed to be, and any flaw that makes a product more dangerous than intended. LSA-R.S. 9:2800.55.—Masters v. Courtesy Ford Co., Inc., 758 So.2d 171, 32,275 (La.App. 2 Cir. 10/29/99), on rehearing, writ granted, vacated 765 So.2d 1055, rehearing denied 766 So.2d 1270, 2000-1330 (La. 8/31/00), writ granted, vacated 765 So.2d 1056, rehearing denied 766 So.2d 1270, 2000-1333 (La. 8/31/00).—Prod Liab 8.

MATERIAL DIFFERENCE

E.D.Ark. 1995. Trademark infringement may occur in case of damaged goods if there exists material difference between products sufficient to create likelihood of consumer confusion; such "material difference" exists if goods are seconds, of inferior quality, or have been tainted by mishandling.—Graham Webb Intern. Ltd. Partnership v. Emporium Drug Mart, Inc., 916 F.Supp. 909.—Trade Reg 368.1.

E.D.Ark. 1995. No "material difference" existed between manufacturer's hair care products which were sold through authorized distribution channels and products sold by unauthorized retailer, even though products sold by retailer had batch codes obliterated, and thus manufacturer could not establish resulting trademark infringement under Lanham Act; product itself was not of inferior quality, counterfeit, or tampered with, and removal of batch codes was not likely to confuse consumers. Lanham Trade-Mark Act, § 32(1), 15 U.S.C.A. § 1114(1).—Graham Webb Intern. Ltd. Partnership v. Emporium Drug Mart, Inc., 916 F.Supp. 909.—Trade Reg 368.1.

Fed.Cl. 1994. There would be impermissible "material difference" between Section 8 periodic rent adjustment based on Department of Housing Urban Development's (HUD) published automatic annual adjustment factors (AAAF), and rents charged on open market for comparable unassisted units, if adjusted rent would be 20% above or below comparable rents. United States Housing Act of 1937, § 8, as amended, 42 U.S.C.A. § 1437f.—Park Village Apartments v. U.S., 32 Fed.Cl. 441, affirmed 152 F.3d 943, rehearing denied, certiorari denied 119 S.Ct. 405, 525 U.S. 962, 142 L.Ed.2d 329.—U S 82(3.5).

Idaho 1913. "Variance" means "material difference." It is not a variance when the proof does not show all the points in a declaration. Variance arises when there is a substantial departure from the issue in the evidence adduced, and must be in some matter which in point of law is essential to the charge or claim.—Davidson Grocery Co. v. John-

ston, 133 P. 929, 24 Idaho 336, Am. Ann. Cas. 1915C, 1129.

MATERIAL DIRECTLY USED IN MANUFACTURING OR INDUSTRIAL PROCESSING

Ky. 1971. Chemical used by distilling corporation to clean evaporator tubes utilized in converting its "slop" into cattle and chicken feed product was "material directly used in manufacturing or industrial processing" within Department of Revenue regulation exempting such materials from state sales and use taxes. KRS 139.200, 139.310.—Schenley Distillers, Inc. v. Com., ex rel. Luckett, 467 S.W.2d 598.—Tax 1245.

MATERIAL DISCLOSURE

C.A.9 (Cal.) 1986. In closed end transactions involving multiple creditors, only creditor making disclosures need be identified on disclosure statement, and thus, identity of each creditor in multiple creditor transaction is not "material disclosure" which can warrant rescission of credit transaction. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635; Truth in Lending Regulations, Regulation Z, §§ 226.2(20), 226.18(a), 15 U.S.C.A. foll. § 1700.—King v. State of Cal., 784 F.2d 910, appeal dismissed, certiorari denied 108 S.Ct. 47, 484 U.S. 802, 98 L.Ed.2d 11, rehearing denied 108 S.Ct. 474, 484 U.S. 971, 98 L.Ed.2d 412.—Cons Cred 51, 60.

C.A.5 (Tex.) 1980. For purposes of determining liability for nondisclosure under rescission provisions of Truth-in-Lending Act, a "material disclosure" relates to information that would affect credit shopper's decision to utilize the credit, based upon an objective standard. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635.—Bustamante v. First Federal Sav. and Loan Ass'n of San Antonio, 619 F.2d 360.—Cons Cred 60.

MATERIAL DISCLOSURES

C.D.Ill. 1995. Creditor subject to the federal Truth in Lending Act (TILA) need not specifically disclose its security interest as part of the "material disclosures" that it must make under the TILA if consumer is not to have a full three years to rescind after transactions are consummated; term "material disclosures" does not include disclosure of security interest. Truth in Lending Act, § 125(f), 15 U.S.C.A. § 1635(f).—Diehl v. ACRI Co., 910 F.Supp. 439.—Cons Cred 56.

N.D.Ill. 1998. For purposes of Truth in Lending Act (TILA), "material disclosures" that must be made before rescission period begins to run include more than just the annual percentage rate. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635; 12 C.F.R. § 226.23(a)(3).—Clay v. Johnson, 22 F.Supp.2d 832, reconsideration denied 50 F.Supp.2d 816, reversed 264 F.3d 744.—Cons Cred 51.

MATERIAL DISCLOSURE VIOLATION

Bkrtcy.E.D.Pa. 1997. Secured creditor's alleged violation of Truth in Lending Act (TILA) section requiring creditor to accurately disclose any security

interests taken by it against borrower in credit transaction did not constitute "material disclosure violation" of TILA which triggers rescission rights. Truth in Lending Act, §§ 103(u), 125(a), 128(a)(9), 15 U.S.C.A. §§ 1602(u), 1635(a), 1638(a)(9); 12 C.F.R. § 226.23(a)(3) note.—In re Barsky, 210 B.R. 683.—Cons Cred 60.

MATERIAL EFFECT

Cal. 1974. Within 1973 conflict of interest law, a "substantial conflict" or a "material effect" on economic interests is a conflict or effect which could, by providing an economic incentive for deciding a particular official matter without regard to its merits or with regard to its effect on the official's pocket, undermine the goal of insuring independent, impartial and honest government. West's Ann. Gov. Code, § 3601.—County of Nevada v. Macmillen, 522 P.2d 1345, 114 Cal.Rptr. 345, 11 Cal.3d 662.—Offic 28.

MATERIAL EITHER TO GUILT OR PUNISHMENT

Ga. 1981. Fact that seizure of certain evidence was a warrantless seizure was not "material either to guilt or punishment" within purview of the requirement that evidence favorable to accused be disclosed if it is material either to guilt or punishment.—Gilreath v. State, 279 S.E.2d 650, 247 Ga. 814, certiorari denied 102 S.Ct. 2258, 456 U.S. 984, 72 L.Ed.2d 862, rehearing denied 102 S.Ct. 3500, 458 U.S. 1116, 73 L.Ed.2d 1378, denial of habeas corpus affirmed 234 F.3d 547, rehearing and suggestion for rehearing denied 253 F.3d 713, certiorari denied 122 S.Ct. 255, 534 U.S. 913, 151 L.Ed.2d 186, rehearing denied 122 S.Ct. 641, 534 U.S. 1052, 151 L.Ed.2d 559.—Crim Law 627.6(1).

MATERIAL ELEMENT

N.Y.Sup. 1962. Specific performance of an agreement to lease would not be granted where the agreement obligated the lessee to obtain a mortgage, but made no provision concerning the interest rate since a "material element" was omitted in that there could be no implication that the interest was to be at the legal rate. General Business Law, § 374.—Kusky v. Berger, 225 N.Y.S.2d 797, 33 Misc.2d 564, affirmed 249 N.Y.S.2d 858, 20 A.D.2d 851.—Spec Perf 28(2).

Or.App. 2002. A "material element" is one that the state must prove to establish the crime charged.—State v. Howett, 56 P.3d 459, 184 Or. App. 352.—Crim Law 328.

Or.App. 2002. Allegation that defendant previously had been convicted of assaulting the same victim was a "material element" of the charged crime of fourth-degree assault, and thus, under statute prohibiting an indictment from containing an allegation of a prior conviction unless the conviction is a material element of the charged crime, the indictment could allege the prior conviction for assault; the prior conviction elevated the charge from a misdemeanor to a felony. ORS 132.540(2), 163.160(3)(a).—State v. Reynolds, 51 P.3d 684, 183

Or.App. 245, review denied 58 P.3d 821, 335 Or. 90.—Assault 78.

Or.App. 2002. A “material element” of the charged crime, within meaning of statute prohibiting an indictment from containing an allegation of a prior conviction unless the conviction is a material element of the charged crime, refers to an element that is necessary to state the crime charged; if, when the element is struck, the indictment still states the crime charged, then the element is not material. ORS 132.540(2).—*State v. Reynolds*, 51 P.3d 684, 183 Or.App. 245, review denied 58 P.3d 821, 335 Or. 90.—Ind & Inf 60.

MATERIAL EQUITABLE REASON

S.D. 1994. Because veil piercing doctrine is equitable remedy, party seeking to pierce corporate veil must demonstrate that there has been substantial disregard for separate corporate identity and that there is some material equitable reason for court to hold shareholder, officer, or director personally liable; such “material equitable reason” might include fraud, injustice, or other inequitable consequences that result from disregard of separate corporate identity.—*Kansas Gas & Elec. Co. v. Ross*, 521 N.W.2d 107.—Corp 1.4(2), 1.4(3).

MATERIAL ERROR

Vet.App. 1993. Where motion for reconsideration of Board of Veterans’ Appeals’ (BVA) decision is based on “material error,” that is, on same record that was before agency of original jurisdiction when it rendered its initial decision, Court of Veterans Appeals will not exercise its jurisdiction to review denial of reconsideration.—*Neves v. Brown*, 6 Vet.App. 177.—Armed S 158.

Vet.App. 1993. Where party petitions agency for reconsideration on ground of “material error,” that is, on the same record that was before the agency when it rendered its original decision, order which merely denies rehearing of prior decision is not itself reviewable because appeal places before courts precisely same substance that could have been brought there by appeal from original order.—*Losh v. Brown*, 6 Vet.App. 87.—Admin Law 704.

Pa. 1978. Error of placing “189th” instead of “1st” on petition entitled “Nomination Petition for Office of Representative in Congress” was not a “material error” requiring rejection of petition under statute prohibiting filing of nomination petition containing “material error,” in that signers of petition could not have been misled by error into thinking that candidate was running for seat in state assembly rather than for seat in Congress since petition consistently referred to “Congress” in bold print and never used words “assembly” or “legislature.” (Per Curiam opinion with three Justices concurring in the result.) 25 P.S. § 2936.—*Jackson v. Fields*, 386 A.2d 533, 478 Pa. 247.—Elections 158.

Tex.Civ.App.—Eastland 1939. An “immaterial error,” unlike “material error,” gives rise to no presumption of prejudicial effect and is not within

the rule that, where improper argument has been indulged in, the adverse complaining party is entitled to reversal of the judgment as a matter of law, if under all the circumstances there is any reasonable doubt of its harmful effect, or unless it affirmatively appears no prejudice resulted.—*Walker v. Koger*, 131 S.W.2d 1074, writ dismissed, correct.—App & E 1031(5).

Tex.Civ.App.—Eastland 1935. In determining whether improper argument of counsel is “material error” or “immaterial error,” trial court exercises true discretion, and its determination will not be reversed unless appellate court reaches conclusion that such determination is clearly wrong.—*Williams v. Rodocker*, 84 S.W.2d 556.—App & E 978(2).

Tex.Civ.App.—Eastland 1935. In determining whether misconduct of jury is “material error” or “immaterial error,” trial court exercises true discretion, and its determination will not be reversed unless appellate court reaches conclusion that such determination is entirely wrong.—*Williams v. Rodocker*, 84 S.W.2d 556.—App & E 978(3).

MATERIAL EVENTS

N.Y.Sup. 1963. Mere circumstance that branch bank authorized by Superintendent of Banks and Banking Board would be located in Nassau County and further circumstances that petitioner seeking annulment of authorization had its principal and many of its branch offices in Nassau County did not constitute “material facts” or “material events” under statutes which might otherwise afford basis for maintaining statutory proceeding in Nassau County rather than New York County where Superintendent and Board had principal offices. Civil Practice Act, § 1287; CPLR § 506(b).—*Franklin Nat. Bank v. Superintendent of Banks*, 243 N.Y.S.2d 214, 40 Misc.2d 315.—Venue 11.

MATERIAL EVIDENCE

CMA 1990. For Government’s failure to disclose evidence prior to trial to rise to violation of due process, withheld evidence must be “material evidence,” supporting reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; “reasonable probability” is probability sufficient to undermine confidence in the outcome. U.S.C.A. Const. Amend. 14.—*U.S. v. Watson*, 31 M.J. 49.—Mil Jus 1262.

C.A.7 (Ill.) 2000. Evidence allegedly suppressed by the prosecution in a criminal trial is “material evidence,” as required to establish a *Brady* violation, only if there is a reasonable probability that the disclosure of the evidence would have changed the result of the trial.—*U.S. v. Walton*, 217 F.3d 443.—Crim Law 700(2.1).

C.A.7 (Ind.) 2001. *Brady* violation only occurs if “material evidence” is withheld, that is, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*U.S. v. Stott*, 245 F.3d 890, amended on rehearing in part 15 Fed. Appx. 355, certiorari denied *Ford v. U.S.*, 122 S.Ct.

676, 534 U.S. 1070, 151 L.Ed.2d 589, certiorari denied 122 S.Ct. 676, 534 U.S. 1070, 151 L.Ed.2d 589.—Crim Law 700(2.1).

C.A.8 (Iowa) 2002. Within section of the Social Security Act authorizing remand where “new and material evidence is adduced that was for good cause not presented during the administrative proceedings,” “material evidence” is non-cumulative, relevant, and probative of the claimant’s condition for the time period for which benefits were denied, and there must be a reasonable likelihood that it would have changed the determination. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).—Krogmeier v. Barnhart, 294 F.3d 1019.—Social S 149.

C.A.8 (Iowa) 2000. Under statute allowing remand of social security disability benefits case for consideration of material new evidence, “material evidence” is that which is non-cumulative, relevant, and probative of claimant’s condition for the time period for which benefits were denied. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—Rehder v. Apfel, 205 F.3d 1056.—Social S 149.

C.A.1 (Mass.) 1996. Even if documents that defendant burned, upon discovering that authorities were investigating his siphoning of funds from his elderly former employers, were letters of apology that he wrote (but did not mail) to his employers, rather than bank statements and checks belonging to his former employers, defendant nonetheless thereby destroyed “material evidence,” thus warranting increase in his base offense level under Sentencing Guidelines for obstruction of justice, in prosecution for fraud and interstate transportation of stolen property; letters of apology to victims would be tantamount to confession of guilt, which would have had potential to influence investigation of fraud. 18 U.S.C.A. §§ 1341, 1343, 2314; Social Security Act, § 208(a)(7)(B), 42 U.S.C.A. § 408(a)(7)(B); U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Feldman, 83 F.3d 9.—Sent & Pun 761.

C.A.10 (N.M.) 1995. For purposes of *Brady* requirement of disclosure of material exculpatory evidence, evidence is “material evidence” only if there is reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and “reasonable probability” is probability sufficient to undermine confident in the outcome, and under this flexible, sliding scale approach to assessing materiality, specificity of request for evidence is inversely related to prosecutor’s disclosure obligation, so that as specificity of request increases, lesser showing of materiality will suffice to establish violation, and materiality is determined in relation to the record as a whole, keeping in mind that what might be considered insignificant in strong case might suffice to disturb already questionable verdict.—Smith v. Secretary of New Mexico Dept. of Corrections, 50 F.3d 801, certiorari denied Mondragon v. Smith, 116 S.Ct. 272, 516 U.S. 905, 133 L.Ed.2d 193.—Crim Law 700(3).

C.A.2 (N.Y.) 1998. Evidence that coconspirator who was also government informant had previously

lied to Federal Bureau of Investigation (FBI) about his involvement with several murders was not “material evidence” under *Brady*, and thus, government’s failure to disclose that evidence did not warrant new trial in murder prosecution, despite claim that defendants could have used such evidence to impeach credibility of coconspirator’s out-of-court statements that were admitted at trial; there was substantial evidence independent of coconspirator’s statements to link defendants to murders, including testimony from accomplice witness that defendants openly boasted that they had succeeded in murdering victim, and defendants already possessed devastating evidence with which to assail coconspirator’s credibility.—U.S. v. Orena, 145 F.3d 551, certiorari denied Russo v. U.S., 119 S.Ct. 805, 525 U.S. 1072, 142 L.Ed.2d 665, appeal after remand U.S. v. Persico, 164 F.3d 796, certiorari denied Fusco v. U.S., 119 S.Ct. 2401, 527 U.S. 1039, 144 L.Ed.2d 800, certiorari denied 120 S.Ct. 171, 528 U.S. 870, 145 L.Ed.2d 145, appeal after remand U.S. v. Monteleone, 257 F.3d 210, certiorari denied 122 S.Ct. 1808, 535 U.S. 1042, 152 L.Ed.2d 664, certiorari denied 122 S.Ct. 1946, 535 U.S. 1070, 152 L.Ed.2d 849, certiorari—Crim Law 700(4).

C.A.10 (Okla.) 2001. “Material evidence” is that which is exculpatory, i.e. evidence that if admitted would create reasonable doubt that did not exist without the evidence.—Mitchell v. Gibson, 262 F.3d 1036.—Crim Law 382.

C.A.1 (Puerto Rico) 1999. It is the reasonable probability that evidence would have resulted in defendant’s acquittal which distinguishes merely “favorable” evidence from “material evidence,” the intentional or unintentional withholding of which violates a defendant’s due process rights. U.S.C.A. Const.Amend. 5.—U.S. v. Candelaria-Silva, 166 F.3d 19, certiorari denied Ortiz-Miranda v. U.S., 120 S.Ct. 1559, 529 U.S. 1055, 146 L.Ed.2d 463.—Const Law 268(5).

C.A.1 (Puerto Rico) 1975. “Material evidence,” which will provide “good cause” for reopening of decision of the Secretary of Health, Education and Welfare denying social security disability benefits, must be evidence which would likely have affected the original decision had it been in the record at that time. Social Security Administration Regulations, §§ 404.937(a), 404.957, 404.958(a), 42 U.S.C.A. App.—Ruiz-Olan v. Secretary, Dept. of Health, Ed. and Welfare, 511 F.2d 1056.—Social S 142.25.

C.A.8 (S.D.) 2000. To qualify as “material evidence,” for purposes of rule allowing Appeals Council to consider new evidence in social security benefits case, evidence must be relevant to claimant’s condition for the time period for which benefits were denied; thus, to qualify as “material,” the additional evidence must not merely detail after-acquired conditions or post-decision deterioration of a pre-existing condition. 20 C.F.R. § 404.970(b).—Bergmann v. Apfel, 207 F.3d 1065.—Social S 142.5.

C.A.5 (Tex.) 2001. Information is “material evidence” subject to *Brady* if there is a reasonable

probability that, had the evidence been disclosed to the defense, the result would have been different.—U.S. v. Delgado, 256 F.3d 264.—Crim Law 700(2.1).

C.A.5 (Tex.) 1994. For purposes of *Brady* claim of improper withholding of exculpatory evidence, evidence is “material evidence” only if there is reasonable probability that, had evidence been disclosed, result of proceeding would have been different. U.S.C.A. Const.Amends. 5, 14.—Blackmon v. Scott, 22 F.3d 560, certiorari denied 115 S.Ct. 671, 513 U.S. 1060, 130 L.Ed.2d 604, appeal after remand 145 F.3d 205, certiorari denied 119 S.Ct. 1258, 526 U.S. 1021, 143 L.Ed.2d 355.—Crim Law 700(2.1).

C.A.5 (Tex.) 1992. To succeed on *Brady* claim that government failed to produce “exculpatory evidence”, defendant must establish that government suppressed evidence, that evidence favored him in some way, and that evidence was material either to guilt or punishment; “material evidence” is evidence that establishes that there was a reasonable probability that, had evidence been disclosed to defense, results of proceeding would have been different; “reasonable probability” is a probability sufficient to undermine confidence in outcome.—U.S. v. Jackson, 978 F.2d 903, rehearing denied, certiorari denied 113 S.Ct. 2429, 508 U.S. 945, 124 L.Ed.2d 649, certiorari denied Camacho v. U.S., 113 S.Ct. 3055, 509 U.S. 930, 125 L.Ed.2d 739.—Crim Law 700(2.1).

Vet.App. 1998. With respect to whether evidence is new and material so as to warrant the reopening of a claim, “new evidence” is evidence which is not cumulative or of record at the time of the last final disallowance of the claim; “material evidence” is probative of the issue at hand, and of sufficient weight and significance that there is a reasonable possibility that the new evidence, when considered in light of all the evidence, would change the outcome of the claim on the merits.—Shockley v. West, 11 Vet.App. 208.—Armed S 134.

Vet.App. 1997. To constitute “material evidence” required to reopen previously and finally disallowed service connection claim, evidence must be probative of issue at hand and there must be reasonable possibility that in context of all the evidence, both new and old, outcome of case would be changed. 38 U.S.C.A. §§ 5108, 7105.—Savage v. Gober, 10 Vet.App. 488.—Armed S 134.

Vet.App. 1997. “Material evidence,” which warrants reopening of previously disallowed claim, is that which is relevant to and probative of issue at hand and which must be of sufficient weight or significance that there is a reasonable possibility that the new evidence, when viewed in context of all evidence, both new and old, would change the outcome.—Ashford v. Brown, 10 Vet.App. 120.—Armed S 134.

Vet.App. 1996. Evidence is “material evidence,” which warrants reopening of previously and finally disallowed claim, where it is relevant to and probative of issue at hand and where there is reasonable possibility that, when viewed in context of all evidence, both new and old, it would change

outcome. 38 U.S.C.A. § 5108.—Marcoux v. Brown, 10 Vet.App. 3.—Armed S 134.

Vet.App. 1996. Evidence is “material evidence,” which warrants reopening of previously and finally disallowed claim, where it is relevant to and probative of issue at hand and where there is a reasonable possibility that, when viewed in context of all evidence, both new and old, it would change the outcome. 38 U.S.C.A. § 5108.—Evans v. Brown, 9 Vet.App. 273.—Armed S 134.

Vet.App. 1996. For purposes of determining whether new and material evidence required for reopening disallowed claim has been presented, “material evidence” is relevant to and probative of issue at hand, and of sufficient weight and significance that it creates reasonable possibility that the new evidence, when considered in light of all evidence, would change the outcome. 38 U.S.C.A. §§ 5108, 7104(b).—Mata v. Brown, 8 Vet.App. 485.—Armed S 134.

Vet.App. 1995. “Material evidence” for purposes of claim to reopen previously and finally disallowed veteran’s benefits claim, is that evidence which is relevant to and probative of issue at hand and where there is a reasonable possibility that, when viewed in context of all evidence, both new and old, it would change the outcome.—Flash v. Brown, 8 Vet.App. 332.—Armed S 134.

Vet.App. 1995. “Material evidence” for purposes of claim to reopen previously and finally disallowed veteran’s benefits claim, is that evidence which is relevant to and probative of issue at hand and where there is a reasonable possibility that, when viewed in context of all evidence, both new and old, it would change the outcome. 38 U.S.C.A. §§ 5108, 7104(b).—Wilkinson v. Brown, 8 Vet.App. 263.—Armed S 134.

Vet.App. 1994. For purposes of reopening previously disallowed claim, “material evidence” is relevant to and probative of issue at hand, and of sufficient weight and significance that there is reasonable possibility that new evidence, when considered in light of all evidence, would change the outcome. 38 U.S.C.A. §§ 5108, 7104(b).—McGraw v. Brown, 7 Vet.App. 138.—Armed S 134.

Vet.App. 1994. “Material evidence” which warrants reopening of final decision is relevant to and probative of issue at hand, and of sufficient weight and significance that there is a reasonable possibility that the new evidence, when considered in light of all the evidence, would change the outcome. 38 U.S.C.A. §§ 5108, 7104(b).—Jensen v. Brown, 7 Vet.App. 27, reconsideration denied 14 Vet.App. 314.—Armed S 134.

Vet.App. 1994. “Material evidence” which warrants reopening of previously disallowed claim is that which is relevant to and probative of issue at hand, and which is of sufficient weight or significance (assuming its credibility) that there is a reasonable possibility that new evidence, when viewed in context of all evidence, both old and new, would change the outcome. 38 U.S.C.A. § 5108.—White v. Brown, 6 Vet.App. 247.—Armed S 134.

Vet.App. 1993. "Material evidence" which warrants reopening of previously disallowed claim is relevant to and probative of issue at hand and presents reasonable possibility that the new evidence, when viewed in context of all evidence, both old and new, would change the outcome. 38 U.S.C.A. § 5108.—Camphor v. Brown, 5 Vet.App. 514.—Armed S 134.

Vet.App. 1993. "Material evidence," for purpose of reopening veteran's previously disallowed claim, is relevant to and probative of issue at hand and presents reasonable possibility that new evidence, when viewed in context of all evidence, both old and new, would change outcome. 38 U.S.C.A. § 5108.—Elkins v. Brown, 5 Vet.App. 474, reconsideration denied 6 Vet.App. 124.—Armed S 134.

Vet.App. 1993. Statement in support of claim with attached page from medical book describing tranquilizers, medical statement prepared for low income assistance program stating that veteran was "mentally disturbed," and medical treatment records dating from period over twenty years after separation from service submitted by veteran to reopen claim for service connection for schizophrenia were not "material evidence"; evidence was not relevant to or probative of incurrence of psychiatric disorder during service or within one-year presumptive period. 38 U.S.C.A. §§ 1101(3), 1110, 1112(a)(1), 5108.—Elkins v. Brown, 5 Vet.App. 474, reconsideration denied 6 Vet.App. 124.—Armed S 134.

Vet.App. 1993. Treating physician's letters stating that veteran's psychiatric condition was related to his service submitted to reopen claim of service connection for schizophrenia were not "material evidence"; letters did not contain current diagnosis of psychiatric disorder, physician treated veteran over 20 years after separation from service, letters recited history provided by veteran, there was no indication that physician formed his opinion as to service connection on basis separate from veteran's recitation of medical and service background, physician did not discuss veteran's well-documented preservice problems in rendering opinion, and veteran's own account of his medical and service background had already been rejected by regional office (RO) and Board of Veterans' Appeals (BVA). 38 U.S.C.A. § 5108.—Elkins v. Brown, 5 Vet.App. 474, reconsideration denied 6 Vet.App. 124.—Armed S 134.

Vet.App. 1993. "New evidence," warranting reopening of previously denied claim for service connection, is that which is not merely cumulative of evidence in record, and "material evidence" is relevant to and probative of issue at hand and presents reasonable possibility that new evidence, when viewed in context of all evidence, both new and old, would change outcome. 38 U.S.C.A. §§ 5108, 7105(c).—Reonal v. Brown, 5 Vet.App. 458.—Armed S 134.

Vet.App. 1993. For purposes of reopening veteran's claim, "material evidence" is relevant and probative of issue at hand and "new evidence" is that which is not merely cumulative of evidence in

record.—Lizaso v. Brown, 5 Vet.App. 380.—Armed S 134.

Vet.App. 1993. "Material evidence," which warrants reopening of previously disallowed claim, is relevant and probative of issue at hand.—Sugar v. Brown, 5 Vet.App. 265.—Armed S 134.

Vet.App. 1993. "Material evidence" is that which is relevant to and probative to issue at hand and which, assuming its credibility, must be of sufficient weight or significance that there is reasonable possibility that new evidence, when viewed in context of all evidence, both old and new, would change outcome.—Sklar v. Brown, 5 Vet.App. 140.—Armed S 134.

Vet.App. 1993. "Material evidence" which warrants reopening of previously disallowed claim is evidence which is relevant and probative of issue at hand and which raises reasonable possibility that the new evidence, when viewed in the context of all evidence, both new and old, would change the outcome. (Non-precedential disposition.) 38 U.S.C.A. § 5108.—Wilson v. Brown, 5 Vet.App. 11.—Armed S 134.

Vet.App. 1993. "Material evidence" which warrants reopening of previously disallowed claim is evidence that is relevant and probative of issue at hand. (Non-precedential disposition.) 38 U.S.C.A. § 5108.—Ingram v. Brown, 5 Vet.App. 5.—Armed S 134.

Vet.App. 1993. For purposes of reopening previously denied claim, "material evidence" is relevant to and probative of issue at hand and presents a reasonable possibility that new evidence, when viewed in context of all evidence, both old and new, would change outcome. 38 U.S.C.A. § 5108.—Ascherl v. Brown, 4 Vet.App. 371.—Armed S 134.

Vet.App. 1993. Physician's statement that it was likely that veteran's service-connected injury to leg increased his arthritic changes in his knee was not evidence that service-connected condition caused nonservice-connected condition but was only evidence of aggravation of nonservice-connected condition and, as such, it was not "material evidence" which warranted reopening of previously disallowed claim for service connection for degenerative arthritis of legs. (Non-precedential disposition.)—Stokes v. Brown, 4 Vet.App. 336.—Armed S 134.

Vet.App. 1993. "Material evidence" which warrants reopening of previously disallowed claim is relevant to and probative of issue at hand and presents reasonable possibility that the new evidence, when viewed in context of all evidence, both new and old, would change outcome. 38 U.S.C.A. § 5108.—Laposky v. Brown, 4 Vet.App. 331.—Armed S 134.

Vet.App. 1993. For purposes of deciding whether to reopen previously denied claim "material evidence" is relevant and probative of the issue at hand, while "new evidence" is that which is not merely cumulative of evidence on the record.—Hadsell v. Brown, 4 Vet.App. 208.—Armed S 134.

Vet.App. 1993. "Material evidence" is relevant and probative of the issue at hand.—*Chisem v. Brown*, 4 Vet.App. 169, review denied 4 Vet.App. 416, motion to recall mandate denied 8 Vet.App. 374.—Armed S 134.

Vet.App. 1993. For purposes of determining whether to open previously denied claim, "material evidence" is evidence that is relevant to and probative of the issue at hand and presents a reasonable possibility that the new evidence, when viewed in the context of all the evidence, both old and new, would change the outcome. 38 U.S.C.A. § 5108.—*Triplette v. Principi*, 4 Vet.App. 45.—Armed S 134.

Vet.App. 1993. "Material evidence" which warrants reopening of previously disallowed claim is evidence which is relevant and probative of issue at hand and which, when viewed in context of all evidence, both new and old, would possibly change outcome. 38 U.S.C.A. § 5108.—*Baritsky v. Principi*, 4 Vet.App. 41, review denied 5 Vet.App. 17.—Armed S 134.

Vet.App. 1993. For purposes of reopening previously denied claim, "material evidence" is evidence that is relevant and probative of the issue at hand. (Non-precedential disposition.) 38 U.S.C.A. § 5108.—*Farris v. Principi*, 4 Vet.App. 6, review denied 5 Vet.App. 17.—Armed S 134.

Vet.App. 1992. For purposes of reopening previously denied claim, "material evidence" is evidence that is relevant to and probative of the issue at hand, and presents a reasonable possibility that the new evidence, when viewed in the context of all evidence, both old and new, would change the outcome.—*Cuevas v. Principi*, 3 Vet.App. 542.—Armed S 134.

Vet.App. 1992. For purposes of opening previously denied claim, "new evidence" is evidence which is not merely cumulative of other evidence in record, while "material evidence" is relevant and probative of issue at hand. 38 U.S.C.A. §§ 5108, 7104(b).—*Paller v. Principi*, 3 Vet.App. 535.—Armed S 134.

Vet.App. 1992. For purposes of determining whether a veteran has submitted "new and material" evidence warranting a reopening of his claim, "material evidence" is relevant and probative of the issue at hand, and "new evidence" is that which is not merely cumulative of evidence on the record.—*Morton v. Principi*, 3 Vet.App. 508.—Armed S 134.

Vet.App. 1992. "Material evidence" warranting reopening of previously disallowed claim is relevant and probative of issue at hand.—*Saylock v. Derwinski*, 3 Vet.App. 394.—Armed S 134.

Vet.App. 1992. "Material evidence" which warrants reopening of previously disallowed claim is relevant and probative of issue at hand. 38 U.S.C.A. § 5108.—*Cochran v. Derwinski*, 2 Vet.App. 649, amended, appeal after remand 7 Vet.App. 21.—Armed S 134.

Vet.App. 1992. "Material evidence" which is required before veteran may reopen a previously disallowed claim is relevant and probative of issue

at hand. 38 U.S.C.A. § 5108.—*Sanchez v. Derwinski*, 2 Vet.App. 330.—Armed S 134.

N.D.Cal. 1996. Suppression by prosecution of evidence favorable to accused violates due process where evidence is material either to guilt or punishment, irrespective of good faith or bad faith of prosecutor; "material evidence" is that which, if made available, would tend to exculpate or reduce penalty. U.S.C.A. Const.Amend. 14.—*Gallo v. Kernan*, 933 F.Supp. 878, affirmed 141 F.3d 1175, certiorari denied 119 S.Ct. 137, 525 U.S. 856, 142 L.Ed.2d 111, rehearing denied 119 S.Ct. 608, 525 U.S. 1049, 142 L.Ed.2d 549.—Const Law 268(5).

M.D.Fla. 1980. For purposes of motion for new trial based upon newly discovered evidence, "material evidence" is evidence which is relevant and goes to the substantial matters in dispute or has a legitimate and effective influence or bearing on the decision of the case.—*U.S. v. Riggs*, 495 F.Supp. 1085.—Crim Law 940.

Ala.Crim.App. 2001. To warrant a continuance on ground that a witness is absent, it must be shown that expected testimony of witness is material and competent, that there is a probability that evidence will be forthcoming if case is continued, and that moving party exercised due diligence to secure the evidence; in such context, "material evidence" means evidence which has an effective influence or bearing on questions in issue.—*Wood v. State*, 826 So.2d 218.—Crim Law 594(3), 595(0.5), 598(2).

Ala.Crim.App. 2000. "Material evidence", for purpose of continuance, means evidence which has an effective influence or bearing on questions in issue; a "material" fact is one that would matter in the trial on the merits.—*Woodson v. State*, 794 So.2d 1226.—Crim Law 595(0.5).

Ala.Crim.App. 1996. To warrant continuance on ground that witness is absent, it must be shown that expected testimony of witness is material and competent, that there is probability that evidence will be forthcoming if case is continued, and that moving party exercised due diligence to secure evidence; in such context, "material evidence" means evidence which has effective influence or bearing on questions in issue.—*Smith v. State*, 698 So.2d 189, rehearing overruled, affirmed Ex parte Smith, 698 So.2d 219, rehearing denied, certiorari denied 118 S.Ct. 385, 522 U.S. 957, 139 L.Ed.2d 300.—Crim Law 594(1), 595(0.5).

Ala.Crim.App. 1992. Evidence favorable to defendant is "material evidence," nondisclosure of which violates due process, only if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in the outcome. U.S.C.A. Const.Amend. 14.—*Pritchett v. State*, 600 So.2d 398, certiorari denied Ex parte Pritchett, 600 So.2d 400.—Const Law 268(5).

Alaska App. 1994. Standard governing disclosure of confidential information to defendant in criminal case is that any material evidence should be disclosed, and "material evidence" means any

evidence such that there is reasonable probability that, had the evidence been disclosed, result of proceedings would have been different, and "reasonable probability" is probability sufficient to undermine confidence in the outcome.—*Atkinson v. State*, 869 P.2d 486, rehearing denied.—*Crim Law* 700(2.1).

Ariz.App. Div. 2 1999. Even if investigating officer was source of anonymous tip that defendant was the armed robber of convenience store, such evidence was not material, for purposes of state's duty to disclose "material evidence," where tip simply resulted in defendant's photograph being put into lineup and officer could have included defendant's photograph on a mere suspicion or hunch, with no tip at all. 16A A.R.S. Rules Crim.Proc., Rule 15.1, subd. a(7).—*State v. Cordova*, 8 P.3d 1156, 198 Ariz. 242, review denied.—*Crim Law* 700(3).

Ariz.App. Div. 2 1999. Names and addresses of all gang members nicknamed "Turtle" were not material, for purposes of state's duty to disclose "material evidence," where armed robbery victim's pretrial and in-court identifications were based on her recollection of the robber, not on his nickname. 16A A.R.S. Rules Crim.Proc., Rule 15.1, subd. a(7).—*State v. Cordova*, 8 P.3d 1156, 198 Ariz. 242, review denied.—*Crim Law* 700(3).

Fla.App. 2 Dist. 1979. "Material evidence" is evidence which is relevant and goes to substantial matters in dispute, or has a legitimate and effective influence or bearing on decision of the case.—*City of Winter Haven, for Use and Benefit of Lastinger v. Tuttle/White Constructors, Inc.*, 370 So.2d 829.—*Evid* 143.

Fla.App. 3 Dist. 1997. "Material evidence", posttrial discovery of which might warrant new trial, is evidence which is relevant and goes to substantial matters in dispute, or has legitimate and effective influence or bearing on decision of case.—*E.I. DuPont De Nemours and Co. v. Native Hammock Nursery, Inc.*, 698 So.2d 267, rehearing denied, review denied *Native Hammock Nursery, Inc. v. E.I. Du Pont de Nemours and Co.*, 707 So.2d 1126.—*New Tr* 103.

Ga.App. 1981. "Material evidence" is that which is relevant and goes to substantial matters in dispute, or has legitimate and effective influence or bearing on decision of case.—*Hill v. State*, 283 S.E.2d 703, 159 Ga.App. 489.—*Crim Law* 382.

La. 1977. State may not suppress evidence that is favorable to defendant and material to guilt or punishment when that evidence is requested by defendant, and "material evidence" for this purpose is that which, when considered in context of full record, creates a reasonable doubt about guilt which did not otherwise exist.—*State ex rel. Clark v. Marullo*, 352 So.2d 223.—*Crim Law* 627.6(1).

Me. 1950. "Material evidence" is important evidence that must be carefully considered in order to fairly decide the merits of the proposition.—*Torrey v. Congress Square Hotel Co.*, 75 A.2d 451, 145 Me. 234.—*Evid* 143.

Md. 1993. Allegedly exculpatory documents in state's file were not "material evidence" whose suppression by state would require new trial in murder prosecution. Md.Rule 4-263(a)(1).—*Gilliam v. State*, 629 A.2d 685, 331 Md. 651, certiorari denied 114 S.Ct. 891, 510 U.S. 1077, 127 L.Ed.2d 84.—*Crim Law* 700(3).

Mass. 1996. Trial judge should undertake in camera review of privileged rape counseling records only when defendant's motion for production of the records has demonstrated good faith, specific, and reasonable basis for believing that the records will contain exculpatory evidence which is relevant and "material" to the issue of defendant's guilt and "material evidence" means evidence which is not only likely to meet criteria of admissibility, but which also tends to create reasonable doubt that might not otherwise exist. M.G.L.A. c. 233, § 20J.—*Com. v. Fuller*, 667 N.E.2d 847, 423 Mass. 216.—*Crim Law* 627.8(4); *Witn* 223.

Mass. 1980. "Material evidence" is that evidence which on consideration of entire record creates a reasonable doubt that did not otherwise exist.—*Com. v. Wilson*, 407 N.E.2d 1229, 381 Mass. 90.—*Crim Law* 1159.2(4).

Mass.App.Ct. 1991. Where there is only general defense request for exculpatory evidence, "material evidence," the withholding of which will warrant new trial, is that evidence which on consideration of entire record creates reasonable doubt that did not otherwise exist.—*Com. v. Tucceri*, 571 N.E.2d 48, 30 Mass.App.Ct. 954, review granted 577 N.E.2d 309, 410 Mass. 1103, affirmed 589 N.E.2d 1216, 412 Mass. 401.—*Crim Law* 919(1).

Mo. 1999. Evidence is "material evidence" only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.—*State v. Middleton*, 995 S.W.2d 443, rehearing denied, certiorari denied 120 S.Ct. 598, 528 U.S. 1054, 145 L.Ed.2d 497.—*Crim Law* 627.5(1).

N.M. 1994. For state's failure to gather evidence from crime scene to be sanctionable, evidence must be "material evidence" such that there is reasonable probability that, had evidence been available to defendants, result of proceeding would have been different; "reasonable probability" is a probability sufficient to undermine confidence in the outcome.—*State v. Ware*, 881 P.2d 679, 118 N.M. 319.—*Crim Law* 700(9).

Or.App. 1976. For purpose of rule that evidence favorable to an accused which is "material" either to guilt or to punishment must be disclosed by State, since breathalyzer test results obtained by State obviously constituted "material evidence" on issue of guilt or innocence on charge of driving motor vehicle while under the influence of alcohol, other evidence affecting the credibility of test results which might be used for purposes of impeachment, including test ampules, was "material evidence." ORS 135.815, 483.642, 483.992, 483.999, 487.540, 487.805-487.835.—*State v. Michener*, 550 P.2d 449, 25 Or.App. 523, review denied 276 Or. 211.—*Crim Law* 700(3).

Pa.Super. 1984. "Material evidence" which Commonwealth has burden of providing to defense in response to general request for exculpatory evidence includes only such evidence which is exculpatory because it establishes or tends to establish defendant's innocence of charge for which he is being tried.—*Com. v. Ignatavich*, 482 A.2d 1044, 333 Pa.Super. 617.—Crim Law 627.6(1).

Tenn. 1995. For purposes of rule that prosecutor must disclose exculpatory "*Brady*" evidence that is favorable to the accused, evidence withheld by government is "material evidence" requiring reversal of conviction only if there is reasonable probability that, had the evidence been disclosed to the defense, result of proceeding would have been different.—*State v. Walker*, 910 S.W.2d 381, rehearing denied, certiorari denied 117 S.Ct. 88, 519 U.S. 826, 136 L.Ed.2d 45.—Crim Law 700(2.1).

Tenn.Crim.App. 1993. Evidence that prosecutor failed to disclose to defendant in murder trial, indicating that someone other than defendant may have killed victim and that key prosecution witness was motivated by his desire to be released from jail when he gave the incriminating statement to police, was "material evidence," entitling defendant to new trial. U.S.C.A. Const.Amend. 14; Const. Art. 1, §§ 8, 9.—*State v. Spurlock*, 874 S.W.2d 602, rehearing denied, and appeal denied.—Crim Law 919(1).

Tenn.Ct.App. 1979. Under the "preponderance of the evidence" test, the evidence is weighed by the reviewing court on an evidentiary fact scale; whichever side of the fact scale is heavier will be the finding of the court; where the review is on the test of "material evidence," no scale of evidence is used by the reviewing court; it is simply a search of the record to ascertain if material evidence is present to support the verdict; it matters not where the weight or preponderance of the evidence lies under material evidence review.—*Hohenberg Bros. Co. v. Missouri Pac. R. Co.*, 586 S.W.2d 117.—App & E 989, 1001(1).

Tenn.Ct.App. 1970. "Material evidence," for purpose of determining whether material evidence exists justifying denial of motion for directed verdict, means evidence, material to question in controversy, which must necessarily enter into consideration of the controversy and which by itself, or in connection with other evidence, is determinative.—*Fuller v. Tennessee-Carolina Transp. Co.*, 471 S.W.2d 953, 63 Tenn.App. 330.—Trial 139.1(4).

Tenn.Ct.App. 1964. In will contest, if verdict is supported by any "material evidence," that is, evidence material to issue in controversy, taken in connection with all other evidence constituting "substantial evidence," such evidence as reasonable minds might accept as adequate to support conclusion, reviewing court cannot set aside verdict and judgment in absence of otherwise effective error.—*Thomas v. Hamlin*, 404 S.W.2d 569, 56 Tenn.App. 13.—Wills 386.

Tenn.Ct.App. 1961. "Material evidence" is evidence that is material to particular question in controversy upon the issues joined, which must necessarily enter into consideration of the contro-

versy and by itself or in connection with other testimony be determinative to the case.—*Schlickling v. Georgia Conference Ass'n Seventh-Day Adventists*, 355 S.W.2d 469, 49 Tenn.App. 412.—Evid 143.

Tenn.Ct.App. 1953. "Material evidence" is that which is material to the particular question in controversy upon the issues joined, and which must necessarily enter into consideration of the controversy, and also which by itself or in connection with other testimony will be determinative of the case.—*Jones v. Sands*, 292 S.W.2d 492, 41 Tenn.App. 1.—Evid 143.

Tex.App.—Houston [1 Dist.] 1991. On proper request, State must disclose to defendant exculpatory evidence that is material either to guilt or punishment; exculpatory evidence is "material evidence" if there is reasonable probability that its disclosure would have led to a different result, and "reasonable probability" is probability sufficient to undermine confidence in the outcome.—*Earls v. State*, 818 S.W.2d 526.—Crim Law 627.6(1).

Tex.App.—San Antonio 1997. For purposes of determining whether suppression of evidence requires a reversal of a criminal conviction, "material evidence" is that without which the confidence in the outcome of the proceeding is undermined.—*Harwood v. State*, 961 S.W.2d 531.—Crim Law 700(2.1).

Tex.App.—San Antonio 1997. For purposes of setting aside indictment for destruction of material evidence, "material evidence" is evidence which must be of exculpatory value, value must be apparent before evidence was destroyed, and evidence must be of such nature that defendant is unable to obtain comparable evidence by other reasonable available means.—*Garay v. State*, 954 S.W.2d 59, rehearing overruled, and petition for discretionary review refused.—Crim Law 700(9).

Tex.App.—El Paso 1994. Prosecutor has affirmative duty to turn over material, exculpatory evidence; evidence is "material evidence" if there is reasonable probability that, had evidence been disclosed to defense, outcome of proceeding would have been different, and "reasonable probability" is probability sufficient to undermine confidence in outcome of trial.—*Flowers v. State*, 890 S.W.2d 906, rehearing overruled.—Crim Law 700(2.1).

Tex.App.—Beaumont 1994. Evidence withheld by prosecutor is "material evidence," for *Brady* purposes, if there is reasonable probability that, had evidence been disclosed to defense, outcome of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome of trial. *Vernon's Ann. Tex. as C.C.P. art. 39.14*.—*Boudreaux v. State*, 878 S.W.2d 701.—Crim Law 700(2.1).

Tex.App.—Houston [14 Dist.] 1998. Prosecutor violates due process when she fails to disclose material evidence that is favorable to the accused; "favorable evidence" means any evidence, including exculpatory and impeachment evidence, that if disclosed and used effectively may make the difference

between conviction and acquittal and “material evidence” means evidence creating a probability sufficient to undermine the confidence in the outcome of the proceeding. U.S.C.A. Const.Amend. 14.—*Saldivar v. State*, 980 S.W.2d 475, rehearing overruled, and petition for discretionary review refused.—Const Law 268(5).

MATERIAL EXCULPATORY EVIDENCE

Ind.App. 1999. For purposes of determining whether the state’s failure to preserve evidence constitutes a violation of the defendant’s due process rights, “material exculpatory evidence” is evidence which possesses an exculpatory value which was apparent before the evidence was destroyed, and is of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.—*Wade v. State*, 718 N.E.2d 1162, rehearing denied, transfer denied 735 N.E.2d 223.—Const Law 268(5).

Ind.App. 1997. Appropriate test to apply when deciding whether defendant’s due process rights have been violated by state’s failure to preserve evidence depends on whether evidence was “potentially useful evidence” or “material exculpatory evidence,” and to rise to level of “material exculpatory evidence”, evidence must both possess exculpatory value that was apparent before evidence was destroyed and be of such nature that defendant would be unable to obtain comparable evidence by other reasonably available means. U.S.C.A. Const. Amend. 14.—*Samek v. State*, 688 N.E.2d 1286, rehearing denied, transfer denied 698 N.E.2d 1191.—Const Law 268(5).

Wash. 1996. Government’s failure to preserve material exculpatory evidence requires dismissal of charges; “material exculpatory evidence” is evidence which possesses exculpatory value that was apparent before it was destroyed and is of such a nature that defendant would be unable to obtain comparable evidence by other reasonably available means; showing that evidence might have exonerated defendant is not enough.—*State v. Copeland*, 922 P.2d 1304, 130 Wash.2d 244.—Crim Law 700(9).

Wash. 1996. Showing that evidence might have exonerated defendant is not enough for evidence to be considered “material exculpatory evidence” as would trigger prosecution’s duty to disclose such evidence, but rather, in order to be considered “material exculpatory evidence,” evidence must both possess exculpatory value that was apparent before it was destroyed and be of such nature that defendant would be unable to obtain comparable evidence by other reasonably available means. U.S.C.A. Const.Amend. 5.—*State v. Smith*, 922 P.2d 811, 130 Wash.2d 215.—Crim Law 700(2.1).

Wash. 1994. In order to be considered “material exculpatory evidence” which government must preserve, evidence must both possess exculpatory value that was apparent before it was destroyed and be of such nature that defendant would be unable to obtain comparable evidence by other reasonably available means. U.S.C.A. Const.Amend. 14.—

State v. Wittenbarger, 880 P.2d 517, 124 Wash.2d 467.—Crim Law 700(9).

Wash.App. Div. 2 2001. To be “material exculpatory evidence,” the evidence must possess an exculpatory value that was apparent before it was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.—*State v. Donahue*, 18 P.3d 608, 105 Wash.App. 67, review denied 31 P.3d 1184, 144 Wash.2d 1010.—Crim Law 700(9).

Wash.App. Div. 2 2001. Defendant’s blood sample, which was more than twice over the per se limit, was not “material exculpatory evidence” requiring preservation by the state, and was, at best, only potentially useful to the defense in vehicular homicide prosecution; there was no hint that the test results had been tampered with or that the test results were faulty and nothing indicated that the blood sample contained any exculpatory value. West’s RCWA 46.61.502(1), 46.61.520(1)(a).—*State v. Donahue*, 18 P.3d 608, 105 Wash.App. 67, review denied 31 P.3d 1184, 144 Wash.2d 1010.—Crim Law 700(9).

MATERIAL FACT

C.A.1 1994. For summary judgment purposes, “material fact” is one that may affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.; 5 U.S.C.A. § 706(2)(A).—*Puerto Rico Aqueduct and Sewer Authority v. U.S. E.P.A.*, 35 F.3d 600, certiorari denied 115 S.Ct. 1096, 513 U.S. 1148, 130 L.Ed.2d 1065.—Fed Civ Proc 2470.1.

C.A.6 1967. Fact that great majority of people who experience tiredness do not suffer from any deficiency of ingredients contained in medication intended to cure tiredness was a “material fact,” within meaning of statute requiring that failure to reveal material facts be taken into account in determining whether an advertisement is misleading. Federal Trade Commission Act, § 15 as amended 15 U.S.C.A. § 55.—*J. B. Williams Co. v. F. T. C.*, 381 F.2d 884.—Trade Reg 766.

C.A.7 1983. Failure of registration applicant to disclose that he had previously been suspended from an exchange was omission of “material fact” within purview of Commodity Exchange Act, notwithstanding fact that suspension was later lifted when it was found that applicant had not acted improperly. Commodity Exchange Act, §§ 6(b, c), 8a(3), 7 U.S.C.A. §§ 9, 13b, 12a(3).—*Flaxman v. Commodity Futures Trading Com’n*, 697 F.2d 782.—Com Fut 5.

C.A.Fed. 1992. “Material fact” precluding summary judgment is one that may affect decision, whereby finding of fact is relevant and necessary to proceedings. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, rehearing denied.—Fed Civ Proc 2470.1.

C.A.Fed. (Or.) 1993. “Material fact” sufficient to preclude summary judgment is one that may affect the decision, whereby finding of that fact is

relevant and necessary to the proceedings. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—KeyStone Retaining Wall Systems, Inc. v. Westrock, Inc., 997 F.2d 1444, rehearing denied.—Fed Civ Proc 2470.1.

C.A.8 (Ark.) 1995. Use of false identity in pre-sentence or other investigation by court is a “material fact,” for purposes of Sentencing Guideline enhancement for obstruction of justice. U.S.S.G. §§ 3C1.1, 3C1.1, comment. (n.3), 18 U.S.C.A.—U.S. v. Pereira-Munoz, 59 F.3d 788.—Sent & Pun 761.

C.A.9 (Cal.) 1989. “Material fact,” for summary judgment purposes, is one that is relevant to element of claim or defense and whose existence might affect outcome of case.—U.S. v. Grayson, 879 F.2d 620.—Fed Civ Proc 2470.1.

C.A.10 (Colo.) 2000. On motion for summary judgment, fact is “material fact” if under the substantive law it could have effect on outcome of lawsuit, and issue is “genuine issue” if rational juror could find in favor of nonmoving party on evidence presented. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Adams v. American Guarantee and Liability Ins. Co., 233 F.3d 1242.—Fed Civ Proc 2470.1.

C.A.10 (Colo.) 2000. For purposes of precluding summary judgment, a “material fact” is one which could have an impact on the outcome of the lawsuit, while a “genuine issue” of such a material fact exists if a rational jury could find in favor of the non-moving party based on the evidence presented. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Chasteen v. UNISIA JECS Corp., 216 F.3d 1212.—Fed Civ Proc 2470.1.

C.A.10 (Colo.) 1995. A “material fact,” for summary judgment purposes, is evidence advanced by nonmoving party necessary to those dispositive matters for which it carries burden of proof; thus, a “material fact” is one which might affect outcome of dispute under applicable law. Fed.Rules Civ. Proc. Rule 56, 28 U.S.C.A.—Ulisse v. Shvartsman, 61 F.3d 805.—Fed Civ Proc 2470.1.

C.A.10 (Colo.) 1995. “Material fact” is one which might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Occusafe, Inc. v. EG&G Rocky Flats, Inc., 54 F.3d 618.—Fed Civ Proc 2470.1.

C.A.11 (Fla.) 1987. Presentation of false documents by defendant in action by city housing authority during his state court deposition was falsity with respect to “material fact,” for purposes of statute proscribing knowingly making or using false statements or writings in matter within jurisdiction of United States agency, even though no money was actually paid to defendant as result of his presentation of false documents, where false documents had capacity to influence amount of money defendant received from United States Department of Housing and Urban Development through city housing authority, if their falseness had not been discovered. 18 U.S.C.A. § 1001.—U.S. v. Lawson, 809 F.2d 1514, rehearing denied 815 F.2d 717.—Fraud 68.10(4).

C.A.5 (Ga.) 1974. For purposes of antifraud provisions of the Securities Exchange Act, a “material fact” is one which would cause a reasonable investor to have acted differently in respect to a securities transaction. Securities Exchange Act of 1934, §§ 10, 10(b), 15 U.S.C.A. §§ 78j, 78j(b).—Vohs v. Dickson, 495 F.2d 607.—Sec Reg 60.28(11).

C.A.7 (Ill.) 2001. “Material fact,” the suppression or concealment of which may constitute deceptive act or practice under the Illinois Consumer Fraud Act, is one which, if known to plaintiff, would have caused plaintiff to act differently, or which concerns type of information upon which one would be expected to rely in making decision about whether to purchase; in other words, fact must be essential to transaction between parties. S.H.A. 815 ILCS 505/1 et seq.—Cozzi Iron & Metal, Inc. v. U.S. Office Equipment, Inc., 250 F.3d 570.—Cons Prot 4.

C.A.7 (Ill.) 2001. That party that leased photocopying equipment would be required to pay minimum monthly charge, regardless of number of photocopies actually made, was “material fact,” any suppression or concealment of which, or false representation concerning, by equipment lessor might constitute “deceptive act or practice” within meaning of the Illinois Consumer Fraud Act. S.H.A. 815 ILCS 505/2.—Cozzi Iron & Metal, Inc. v. U.S. Office Equipment, Inc., 250 F.3d 570.—Cons Prot 6.

C.A.7 (Ill.) 1981. In order to prevail on claim under Rule 10b–5, alleged misrepresentation or omission must be of a material fact; for that purpose, a “material fact” is one substantially likely to have assumed actual significance in deliberations of reasonable shareholder. Securities Exchange Act of 1934, § 10(b), as amended 15 U.S.C.A. § 78j(b).—Panter v. Marshall Field & Co., 646 F.2d 271, certiorari denied 102 S.Ct. 658, 454 U.S. 1092, 70 L.Ed.2d 631.—Sec Reg 60.28(11).

C.A.7 (Ill.) 1975. In context of statute making it unlawful to knowingly make any false statement to influence action by a federally insured bank, a statement concerns a “material fact” when it has the capacity to influence the lending institution. 18 U.S.C.A. § 1014.—U.S. v. Braverman, 522 F.2d 218, certiorari denied 96 S.Ct. 392, 423 U.S. 985, 46 L.Ed.2d 302.—Banks 509.20.

C.A.7 (Ill.) 1975. Fact that Congress did not intend to grant favored treatment on the basis of marriage to persons whose marriages were designed for limited purpose of improving one’s immigration status rendered such intended limitation of marriage by defendant’s coconspirators a “material fact” for purposes of statute prohibiting wilful concealment of a material fact in a matter within jurisdiction of immigration service. 18 U.S.C.A. § 1001.—U.S. v. Lozano, 511 F.2d 1, certiorari denied 96 S.Ct. 94, 423 U.S. 850, 46 L.Ed.2d 74.—Fraud 68.10(4).

C.A.8 (Iowa) 1987. Debtor’s intent to divorce lender’s daughter constituted “material fact,” non-disclosure of which rendered debtor’s obligation to lender on renewal note nondischargeable in bank-

ruptcy. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—Matter of Van Horne, 823 F.2d 1285.—Bankr 3353(13).

C.A.10 (Kan.) 1998. “Material fact,” for purposes of rule requiring that there be no genuine issue of material fact for summary judgment to be appropriate, is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Witt v. Roadway Exp., 136 F.3d 1424, certiorari denied 119 S.Ct. 188, 525 U.S. 881, 142 L.Ed.2d 154, on remand 164 F.Supp.2d 1232.—Fed Civ Proc 2470.1.

C.A.10 (Kan.) 1994. For summary judgment purposes, “material fact” is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Farthing v. City of Shawnee, Kan., 39 F.3d 1131.—Fed Civ Proc 2470.1.

C.A.10 (Kan.) 1994. For purposes of showing fraud by concealment, “material fact” is one which reasonable person would consider important in choosing course of action.—Flight Concepts Ltd. Partnership v. Boeing Co., 38 F.3d 1152.—Fraud 18.

C.A.6 (Ky.) 2002. Under Kentucky law, a “material fact” is a fact that affects the conduct of a reasonable person and is likely an inducement of the contract.—In re Sallee, 286 F.3d 878, 2002 Fed.App. 128P, rehearing denied, certiorari denied Sallee v. Fort Knox National Bank, N.A., 123 S.Ct. 415, 154 L.Ed.2d 294.—Fraud 18.

C.A.6 (Ky.) 1993. Fact that salesman for joint venture interest would be receiving commission of 18 or more cents on the dollar was “material fact,” the nondisclosure of which in connection with sale of joint venture interests was sufficient to trigger the securities fraud provisions of the Securities Exchange Act. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Stone v. Kirk, 8 F.3d 1079.—Sec Reg 60.28(13).

C.A.1 (Me.) 1995. For summary judgment purposes, “material fact” is one that might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—Leary v. Dalton, 58 F.3d 748.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1996. “Material fact,” which if in dispute will preclude summary judgment, is one that has potential to affect the outcome of a suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—MacGlashing v. Dunlop Equipment Co., Inc., 89 F.3d 932.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1996. Fact is “material fact,” for purposes of summary judgment, if it carries with it the potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—One Nat. Bank v. Antonellis, 80 F.3d 606.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1996. “Material fact” for summary judgment purposes is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—J. Geils Band Employee Ben. Plan v. Smith Barney

Shearson, Inc., 76 F.3d 1245, certiorari denied 117 S.Ct. 81, 519 U.S. 823, 136 L.Ed.2d 39.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1995. A “material fact,” for summary judgment purposes, is one that might affect the outcome of the suit under governing law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Coll v. PB Diagnostic Systems, Inc., 50 F.3d 1115.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1994. For summary judgment purposes, “material fact” is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—F.D.I.C. v. Anchor Properties, 13 F.3d 27.—Fed Civ Proc 2470.1.

C.A.6 (Mich.) 2002. Statement on defendant’s I-485 application for status as permanent resident, that he was living at particular address, was “material fact” that had capability of affecting decision of Immigration and Naturalization Service (INS) in granting defendant’s permanent residence status; statement needed only to be capable of influencing INS, as decisionmaking body. 18 U.S.C.A. § 1546; Fed.Rules Cr.Proc.Rule 29, 18 U.S.C.A.—U.S. v. Kone, 307 F.3d 430, 2002 Fed.App. 355P.—Aliens 55.1.

C.A.1 (N.H.) 2002. Fact is “material fact” for summary judgment purposes if, and only if, it has the capacity to affect the outcome of the case.—Jaques v. Town of Londonberry, 54 Fed.Appx. 14.—Fed Civ Proc 2470.1.

C.A.2 (N.Y.) 1996. Fact will be considered “material fact” within meaning of securities antifraud provisions, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information available. Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—S.E.C. v. First Jersey Securities, Inc., 101 F.3d 1450, certiorari denied 118 S.Ct. 57, 522 U.S. 812, 139 L.Ed.2d 21.—Sec Reg 27.42, 60.28(11).

C.A.2 (N.Y.) 1994. For purposes of summary judgment, “material fact” is one that would affect outcome of suit under governing law, and dispute about genuine issue of material fact occurs if evidence is such that reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Iacobelli Const., Inc. v. County of Monroe, 32 F.3d 19.—Fed Civ Proc 2470.1.

C.A.2 (N.Y.) 1991. “Material fact” for purposes of disclosure requirements of the securities laws need not be outcome-determinative, but need only be important enough that it would have assumed actual significance in the deliberations of a reasonable shareholder. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l(2); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Folger Adam Co. v. PMI Industries, Inc., 938 F.2d 1529, certiorari denied 112 S.Ct. 587, 502 U.S. 983, 116 L.Ed.2d 612.—Sec Reg 60.28(11).

C.A.2 (N.Y.) 1990. Liability under rule prohibiting false or misleading proxy statements requires omission of a "material fact" which renders the proxy statement false or misleading; omitted or concealed fact is "material" when there is a substantial likelihood that reasonable shareholder would consider it important in deciding how to vote; if reasonable shareholder would have viewed disclosure of omitted fact as having significantly altered the total mix of information made available, the fact is material. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—Mendell v. Greenberg, 927 F.2d 667, opinion amended 938 F.2d 1528.—Sec Reg 49.22(2).

C.A.2 (N.Y.) 1968. Term "material fact" as used in statute covering misrepresentations in sale or issuance of stock means fact to which reasonable man would attach importance in determining his choice of action in transaction in question. Securities Exchange Act of 1934, § 13(a), 15 U.S.C.A. § 78m(a).—Securities and Exchange Commission v. Great Am. Industries, Inc., 407 F.2d 453, certiorari denied *Pagnani v. Securities and Exchange Commission*, 89 S.Ct. 1770, 395 U.S. 920, 23 L.Ed.2d 237, certiorari denied *Matusow v. Securities and Exchange Commission*, 89 S.Ct. 1770, 395 U.S. 920, 23 L.Ed.2d 237, certiorari denied 89 S.Ct. 1770, 395 U.S. 920, 23 L.Ed.2d 237.—Sec Reg 60.28(11).

C.A.3 (Pa.) 1984. Definition of "material fact," as used in statute prohibiting making of untrue statements of material fact or omission thereof in a tender offer, relates to whether the deficiency has a significant capacity to affect the voting process and there must be a substantial likelihood that disclosure of the omitted facts would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 14(e), as amended, 15 U.S.C.A. § 78n(e).—Flynn v. Bass Bros. Enterprises, Inc., 744 F.2d 978.—Sec Reg 52.39(3).

C.A.5 (Tex.) 1994. "Material fact" for purposes of criminal statute prohibiting making false entry in credit institution documents means having natural tendency to influence or being capable of affecting or influencing government function, that is, concealment must have capacity to impair or pervert functioning of government agency. 18 U.S.C.A. § 1006.—U.S. v. Beuttenmuller, 29 F.3d 973.—Banks 509.10.

C.A.5 (Tex.) 1993. Elements of securities claim for false registration statement or misleading prospectus or communication are omission or misrepresentation of a material fact required to be stated or necessary to make other statements made not misleading; "material fact" is one which reasonable investor would consider significant in decision of whether to invest, such that it alters total mix of information available about proposed investment. Securities Act of 1933, §§ 11, 12, 15, 15 U.S.C.A. §§ 77k, 77l, 77o.—Krim v. BancTexas Group, Inc., 989 F.2d 1435.—Sec Reg 25.18, 25.21(3), 25.56, 25.62(4).

C.A.5 (Tex.) 1990. In determining what is a "material fact" which will preclude entry of summary judgment, court must review substantive law of case for identification of which facts are critical and which facts are irrelevant. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Howell Hydrocarbons, Inc. v. Adams, 897 F.2d 183, rehearing denied.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 1962. A "material fact", in determining whether facts were material to the risk insured, is any fact knowledge or ignorance of which would naturally influence an insurer in making the contract at all, or in estimating degree and character of the risk or in fixing the rate of insurance.—Fireman's Fund Ins. Co. v. Wilburn Boat Co., 300 F.2d 631, certiorari denied 82 S.Ct. 1562, 370 U.S. 925, 8 L.Ed.2d 505, rehearing denied 83 S.Ct. 17, 371 U.S. 854, 9 L.Ed.2d 92.—Insurance 2964.

C.A.10 (Utah) 1993. "Material fact," for purposes of determining whether factual dispute precludes summary judgment, is one that will somehow affect the outcome of the case.—Utah Power & Light Co. v. Federal Ins. Co., 983 F.2d 1549.—Fed Civ Proc 2470.1.

C.A.4 (Va.) 2001. Mere speculation by the non-movant in summary judgment proceeding cannot create a genuine issue of material fact; a "material fact" is one where its existence or non-existence could result in a different jury verdict. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—JKC Holding Co. LLC v. Washington Sports Ventures, Inc., 264 F.3d 459.—Fed Civ Proc 2470.1, 2546.

C.C.A.10 (Utah) 1938. A "material fact" within law of insurance is any fact, knowledge or ignorance of which would naturally influence insurer's judgment in making contract, in estimating degree and character of risk or in fixing rate of insurance.—Zolintakis v. Equitable Life Assur. Soc. of U.S., 97 F.2d 583.—Insurance 2958.

M.D.Ala. 2000. Under Alabama law on fraud, which provides that suppression of a material fact which the party is under an obligation to communicate constitutes fraud, a "material fact" is one that is of such nature as to induce action on the part of the complaining party. Ala.Code 1975, § 6-5-102.—Shutter Shop, Inc. v. Amersham Corp., 114 F.Supp.2d 1218.—Fraud 18.

M.D.Ala. 1998. Under Alabama law, a "material fact," misrepresentation as to which may support fraud claim, is a fact of such a nature as to induce action on part of complaining party.—Graham v. First Union Nat. Bank of Georgia, 18 F.Supp.2d 1310.—Fraud 18.

D.Ariz. 1996. "Material fact," in summary judgment context, is any factual dispute that might affect outcome of case under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Ferguson v. City of Phoenix, 931 F.Supp. 688, affirmed 157 F.3d 668, as amended, certiorari denied 119 S.Ct. 2049, 526 U.S. 1159, 144 L.Ed.2d 216.—Fed Civ Proc 2470.1.

D.Ariz. 1993. Mere existence of alleged factual dispute between parties will not defeat otherwise properly supported motion for summary judgment; requirement is that there be no genuine issue of material fact; a "material fact" is any factual dispute that might affect outcome of case under governing substantive law; factual dispute is "genuine" if evidence is such that reasonable jury could resolve dispute in favor of nonmoving party. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Goodman v. Brown & Williamson Tobacco Corp., 891 F.Supp. 505.—Fed Civ Proc 2470.1.

E.D.Ark. 1972. Failure of seller of securities to disclose existence of liabilities not shown on four-month-old uncertified balance sheet exhibited to seller amounted to omission to state a "material fact" within rule making such omission unlawful in connection with purchase or sale of securities, regardless of whether such failure was intentional or merely negligent. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Lane v. Midwest Bancshares Corp., 337 F.Supp. 1200.—Sec Reg 60.28(13).

C.D.Cal. 1996. Court determines fact's materiality according to the governing substantive law, and if the fact may affect the outcome, it is a "material fact" for purposes of precluding summary judgment. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Tokio Marine & Fire Ins. Co., Ltd. v. United Air Lines, Inc., 933 F.Supp. 1527.—Fed Civ Proc 2470.1.

E.D.Cal. 1996. Summary judgment is appropriate if record, read in light most favorable to non-moving party, demonstrates no genuine issue of "material fact"; material facts are those necessary to proof or defense of claim, and are determined by reference to substantive law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Altseimer v. Bell Helicopter Textron Inc., 919 F.Supp. 340.—Fed Civ Proc 2470.1.

E.D.Cal. 1981. For summary judgment purposes a "material fact" is one that makes a difference in the litigation. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Kouba v. Allstate Ins. Co., 523 F.Supp. 148, decision supplemented 1981 WL 27108, reversed 691 F.2d 873.—Fed Civ Proc 2470.1.

N.D.Cal. 1980. A "material fact" is one which, under applicable principles of substantive law, must exist in order to support a judgment in favor of the party moving for summary judgment. Sherman Anti-Trust Act, § 1, 15 U.S.C.A. § 1; Clayton Act, § 3, 15 U.S.C.A. § 14.—In re Data General Corp. Antitrust Litigation, 490 F.Supp. 1089.—Fed Civ Proc 2470.1.

D.Colo. 1983. Fact is "material fact" if reasonable shareholder would consider it important and if that shareholder would consider it as having significantly altered total mix of information made available; fact is material if misrepresentation or omission was of fact which, considering plaintiffs as reasonable or prudent investors, would affect or influence them in determining whether to buy fractional interests.—Brooks v. Land Drilling Co., 574 F.Supp. 1050.—Sec Reg 25.62(4).

D.Colo. 1982. Under rule prohibiting making of any untrue statement of "material fact" or omission to state a "material fact" necessary in order to make statements made not misleading, a "material fact" is one which a reasonable investor might have considered important in making of investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); Securities Act of 1933, § 17(a)(2), 15 U.S.C.A. § 77g(a)(2).—S. E. C. v. Blinder, Robinson & Co., Inc., 542 F.Supp. 468, affirmed 1983 WL 20181.—Sec Reg 60.28(11).

D.Conn. 1988. "Material fact," for summary judgment purposes, is one whose resolution will affect ultimate determination of the case. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—R.C. Bigelow, Inc. v. Unilever N.V., 689 F.Supp. 76, reversed 867 F.2d 102, certiorari denied Thomas J. Lipton, Inc. v. R.C. Bigelow, Inc., 110 S.Ct. 64, 493 U.S. 815, 107 L.Ed.2d 31.—Fed Civ Proc 2470.1.

D.Conn. 1983. In order to successfully defeat summary judgment, affidavits of opposing party must not only present issues of fact, issues must be of "material fact," defined as one which may affect outcome of litigation. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Nestle Co., Inc. v. Chester's Market, Inc., 571 F.Supp. 763, motion denied 596 F.Supp. 1445, reversed 756 F.2d 280, on remand 609 F.Supp. 588.—Fed Civ Proc 2539.

D.Del. 1999. For summary judgment purposes, "material fact" is one that might affect outcome of the suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Schiavello v. Delmarva Systems Corp., 61 F.Supp.2d 110.—Fed Civ Proc 2470.1.

M.D.Fla. 1979. "Material fact," for purposes of motion for summary judgment, is one which is determinative of parties' duties or rights. Fed. Rules Civ.Proc. rule 56(c), 28 U.S.C.A.—Valadez v. Graham, 474 F.Supp. 149.—Fed Civ Proc 2470.1.

N.D.Fla. 1985. Issue as to whether certain person was in fact a shareholder of corporation to which plaintiff extended a loan was a "material fact" to the loan transaction, where plaintiff would not have made loan in question had he known that such person had divested himself of ownership in corporation.—Gomez v. Hawkins Concrete Const. Co., 623 F.Supp. 194.—Fraud 18.

S.D.Fla. 2001. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment since the requirement is that there be no genuine issue of material fact; a "material fact" is one that might affect the outcome of the case, and for a factual issue to be considered "genuine issue," it must have a real basis in the record. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Santelices v. Cable Wiring, 147 F.Supp.2d 1313.—Fed Civ Proc 2470.1.

S.D.Fla. 1993. For summary judgment purposes, "material fact" is one which is determinative of parties' duties or rights. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Butchkosky v. Enstrom Helicopter Corp., 855 F.Supp. 1251.—Fed Civ Proc 2470.1.

N.D.Ga. 1996. Fact is not a "material fact" for summary judgment purposes unless it is identified by the controlling substantive law as an essential element of the nonmoving party's case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Raymond v. Amada Co., Ltd.*, 925 F.Supp. 1572.—Fed Civ Proc 2470.1.

N.D.Ga. 1994. For purpose of summary judgment, "material fact" is one identified as such by controlling substantive law. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Fournier v. Hartford Fire Ins. Co.*, 862 F.Supp. 357.—Fed Civ Proc 2470.1.

D.Hawai'i 1996. "Material fact," for purposes of summary judgment, is one that may affect decision, so that finding of that fact is relevant and necessary to proceedings. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Water Com'n of County of Hawai'i v. National American Ins. Co.*, 930 F.Supp. 1411.—Fed Civ Proc 2470.1.

D.Hawai'i 1996. For purposes of summary judgment, "material fact" is one that may affect decision, so that finding of that fact is relevant and necessary to proceedings. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Otani v. State Farm Fire & Cas. Co.*, 927 F.Supp. 1330.—Fed Civ Proc 2470.1.

D.Hawai'i 1996. In context of motion for summary judgment, "material fact" is one that may affect decision so that finding of that fact is relevant and necessary to proceedings; "genuine issue" is shown to exist if sufficient evidence is presented such that reasonable fact finder could decide question in favor of nonmoving party. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Rapp v. Disciplinary Bd. of Hawaii Supreme Court*, 916 F.Supp. 1525.—Fed Civ Proc 2470.1.

D.Hawai'i 1995. "Material fact" under summary judgment rule is one that may affect decision, so that finding of that fact is relevant and necessary to proceedings. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Bator v. State of Hawai'i, Judiciary Adult Probation Div.*, 910 F.Supp. 479.—Fed Civ Proc 2470.1.

D.Hawai'i 1995. In context of motion for summary judgment, "material fact" is one that may affect decision, so that finding of that fact is relevant and necessary to proceedings; "genuine issue" is shown to exist if sufficient evidence is presented such that reasonable fact finder could decide question in favor of nonmoving party. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Lopes v. Rogers*, 909 F.Supp. 737.—Fed Civ Proc 2470.1.

N.D.Ill. 2002. "Material fact," for purposes of Illinois Franchise Disclosure Act (IFDA), is one in which a buyer would have acted differently knowing the information, or concerns the type of information upon which a buyer would be expected to rely in making a decision whether to purchase; in other words, the fact must be essential to the transaction between the parties. S.H.A. 815 ILCS 705/5.—*Bixby's Food Systems, Inc. v. McKay*, 193 F.Supp.2d 1053.—Trade Reg 871(1).

N.D.Ill. 2000. For purposes of determining whether any genuine issue as to material fact exists,

as would preclude summary judgment, "material fact" must be outcome determinative under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Paradise*, 127 F.Supp.2d 951.—Fed Civ Proc 2470.1.

N.D.Ill. 1995. Dispute about "material fact" is genuine for summary judgment purposes only if evidence presented is such that reasonable jury could return verdict for nonmovant. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Sanfelice v. Dominick's Finer Foods, Inc.*, 899 F.Supp. 372.—Fed Civ Proc 2470.1.

N.D.Ill. 1994. For purposes of "summary judgment" motion, "genuine issue" of "material fact" requires that there be sufficient evidence for jury to return verdict in favor of nonmoving party. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Burton v. Kuchel*, 865 F.Supp. 456.—Fed Civ Proc 2470.1.

N.D.Ill. 1994. Fact that arrestee was acquitted of charges against him was not "material fact," in context of police officers' motions for summary judgment on arrestee's civil rights claims arising from arrest and prosecution; arrestee's acquittal was not relevant to issues of reasonableness of arrest or reasonableness of force used during course of arrest. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.; 42 U.S.C.A. § 1983.—*Sledd v. Lindsay*, 864 F.Supp. 819, reversed 102 F.3d 282.—Fed Civ Proc 2491.5.

N.D.Ill. 1994. "Genuine issue," for purposes of summary judgment motion, requires that there be sufficient evidence for jury to return verdict in favor of nonmovant, while "material fact" is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Singh v. V. Patel & Sons, Inc.*, 851 F.Supp. 318.—Fed Civ Proc 2470.1.

N.D.Ill. 1993. For purposes of requirement that moving party must establish lack of any "genuine issue as to any material fact" in order to obtain summary judgment, "genuine issue" requirement mandates that there be sufficient evidence for jury to return verdict in favor of nonmoving party and, "material fact" is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Sprague v. Navistar Intern. Transp. Corp.*, 838 F.Supp. 1268, affirmed 41 F.3d 1511.—Fed Civ Proc 2470.1.

N.D.Ind. 1996. Initial burden is on party moving for summary judgment to demonstrate, with or without supporting affidavits, absence of genuine issue of "material fact" and that judgment as a matter of law should be granted in its favor; question of material fact is question that will be outcome determinative of issue in case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Rogers v. Ford Motor Co.*, 925 F.Supp. 1413.—Fed Civ Proc 2544.

N.D.Ind. 1995. Question of "material fact" for summary judgment purposes is question which will be outcome determinative of issue in case. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Dean Foods Co. v. United Steel Workers of America*, 911 F.Supp. 1116.—Fed Civ Proc 2470.1.

N.D.Ind. 1986. "Material fact" is one which might affect the outcome of case under governing law, so that factual disputes that are irrelevant or immaterial do not provide basis for denying summary judgment motion. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Holdeman v. Consolidated Rail Corp., 649 F.Supp. 1188, affirmed 840 F.2d 20.—Fed Civ Proc 2470.1.

S.D.Ind. 2001. For the purpose of a motion for summary judgment, there is a "genuine issue" only if the evidence is such that a reasonable jury could return a verdict for the opposing party and a "material fact" is disputed only if it might affect the outcome of the suit in light of the substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Vandor Corp. v. Wilson, 149 F.Supp.2d 633.—Fed Civ Proc 2470.1.

S.D.Ind. 1999. "Material fact," i.e. a fact that belongs in a summary judgment statement of facts, is a potentially outcome-determinative fact. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Pike v. Caldera, 188 F.R.D. 519.—Fed Civ Proc 2470.1.

N.D.Iowa 1993. For purposes of statute proscribing false statements in loan and credit applications, stated purpose of loan is a "material fact," regardless of whether misstatement of purpose actually influenced lending institution; question is whether misstatement had capability of tendency to influence institution. 18 U.S.C.A. § 1014.—U.S. v. Van Dyke, 820 F.Supp. 1160, reversed 14 F.3d 415, rehearing denied.—Banks 509.20.

D.Kan. 1997. Fact is "material fact," for purposes of fraud claim under Kansas law, if it is one to which reasonable person would attach importance in determining his choice of action in transaction involved.—Koch v. Koch Industries, Inc., 969 F.Supp. 1460, affirmed in part, reversed in part 203 F.3d 1202, certiorari denied L. B. Simmons Energy, Inc. v. Koch Industries, Inc., 121 S.Ct. 302, 531 U.S. 926, 148 L.Ed.2d 242, certiorari denied 121 S.Ct. 302, 531 U.S. 926, 148 L.Ed.2d 242.—Fraud 18.

D.Kan. 1996. "Material fact" precluding summary judgment is one that might affect the outcome of suit under the governing law, while "genuine issue" is one for which evidence is such that reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Thompson v. Johnson County Community College, 930 F.Supp. 501, affirmed 108 F.3d 1388, affirmed Boyer v. Johnson County Bd. of County Com'rs, 108 F.3d 1388.—Fed Civ Proc 2470.1.

D.Kan. 1995. For purposes of motion for summary judgment, "material fact" is one that might affect outcome of suit under governing law, and a "genuine issue" exists if the evidence is such that a reasonable jury could return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—McDiffett v. Stotts, 902 F.Supp. 1419.—Fed Civ Proc 2470.1.

D.Kan. 1995. "Material fact" for summary judgment purposes is one that might affect outcome of suit under the governing law. Fed.Rules Civ.Proc., Rule 56(c), 28 U.S.C.A.—Chaparro v. IBP, Inc.,

873 F.Supp. 1465, affirmed 104 F.3d 367, certiorari denied 118 S.Ct. 53, 522 U.S. 811, 139 L.Ed.2d 18.—Fed Civ Proc 2470.1.

W.D.La. 1995. For summary judgment purposes, "material fact" is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Corporate Investigative Div., Inc. v. American Tel. & Tel. Co., 884 F.Supp. 220.—Fed Civ Proc 2470.1.

D.Me. 1996. "Material fact," for purposes of summary judgment motion, is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Benjamin v. Aroostook Medical Center, 937 F.Supp. 957, affirmed 113 F.3d 1, certiorari denied 118 S.Ct. 602, 522 U.S. 1016, 139 L.Ed.2d 490.—Fed Civ Proc 2470.1.

D.Me. 1996. "Material fact," for summary judgment purposes, is one which has the potential to affect outcome of the suit under the applicable law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Soileau v. Guilford of Maine, Inc., 928 F.Supp. 37, affirmed 105 F.3d 12.—Fed Civ Proc 2470.1.

D.Me. 1996. "Material fact," for summary judgment purposes, is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Nelson v. University of Maine System, 923 F.Supp. 275.—Fed Civ Proc 2470.1.

D.Me. 1995. For summary judgment purposes, "material fact" is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Barber v. Guay, 910 F.Supp. 790.—Fed Civ Proc 2470.1.

E.D.Mich. 1995. Fact is "material fact" for summary judgment purposes if proof of that fact would have effect of establishing or refuting essential element of cause of action or defense advanced by the parties; in other words, disputed fact must be one which might affect outcome of suit under substantive law controlling the issue. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—U.S. v. One 1993 Isuzu Trooper, VIN. No. JACDH58V4P7912962, 905 F.Supp. 430.—Fed Civ Proc 2470.1.

E.D.Mich. 1995. Fact is "material fact" and precludes grant of summary judgment if proof of that fact would have the effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties, and would necessarily affect the application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Franklin v. City of Pontiac, 887 F.Supp. 978.—Fed Civ Proc 2470.1.

E.D.Mich. 1993. "Material fact," for purposes of determining whether factual dispute precludes summary judgment, is one which establishes or refutes essential element of claim or defense and necessarily affects application of appropriate principles of law to rights and obligations of parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Paradata Computer Networks, Inc. v. Teletbit Corp., 830 F.Supp. 1001.—Fed Civ Proc 2470.1.

E.D.Mich. 1992. Fact is "material fact" so as to preclude grant of summary judgment if proof of that fact would have effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect application of appropriate principles of law to the rights and obligations of the parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Fix v. Unisys Corp.*, 782 F.Supp. 343.—Fed Civ Proc 2470.1.

E.D.Mich. 1991. Fact is a "material fact" so as to preclude grant of summary judgment if proof of the fact would have effect of establishing or refuting one of the essential elements of the cause of action or defense asserted and would necessarily affect the application of appropriate principles of law to the rights and obligations of the parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Kinnie v. U.S.*, 771 F.Supp. 842, affirmed 994 F.2d 279.—Fed Civ Proc 2470.1.

W.D.Mich. 1993. "Material fact," for purposes of determining whether factual dispute precludes summary judgment, is one that may, under applicable law, affect the outcome of the case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Hunter v. Indiana and Michigan Power Co.*, 835 F.Supp. 370.—Fed Civ Proc 2470.1.

N.D.Miss. 1987. "Material fact," for purposes of summary judgment motion, affects outcome of lawsuit under governing substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Putman v. Insurance Co. of North America*, 673 F.Supp. 171, affirmed 845 F.2d 1020.—Fed Civ Proc 2470.1.

S.D.Miss. 1993. "Material fact," dispute as to which will preclude summary judgment, is one that might affect outcome of lawsuit under governing substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Goodman v. S & A Restaurant Corp.*, 821 F.Supp. 1139.—Fed Civ Proc 2470.1.

D.Mont. 1995. "Material fact" for purposes of summary judgment is one that is relevant to an element of a claim or defense and whose existence might affect outcome of suit; materiality of fact is thus determined by substantive law governing claim or defense. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Payne v. Norwest Corp.*, 911 F.Supp. 1299, affirmed in part, reversed in part 113 F.3d 1079, appeal after remand 185 F.3d 1068.—Fed Civ Proc 2470.1.

D.Neb. 1996. "Material fact" is a fact that might affect outcome of the suit under the governing law for summary judgment purposes. Fed. Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Siemers v. Severance Pay Plan of Conoco, Inc.*, 940 F.Supp. 235.—Fed Civ Proc 2470.1.

D.Neb. 1995. "Material fact" for summary judgment purposes is fact that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Day v. Board of Regents of University of Nebraska*, 911 F.Supp. 1228, affirmed 83 F.3d 1040.—Fed Civ Proc 2470.1.

D.Nev. 1996. "Material fact" for summary judgment is one that affects outcome of litigation and is

required to prove basic element of claim. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*U.S. v. Nye County, Nev.*, 920 F.Supp. 1108.—Fed Civ Proc 2470.1.

D.N.J. 1992. For summary judgment purposes, fact is "material fact" only if it will affect outcome of lawsuit under applicable law, and "genuine issue of material fact" exists if evidence is such that reasonable fact finder could return verdict for nonmoving party.—*Harrah v. Minnesota Min. and Mfg. Co.*, 809 F.Supp. 313.—Fed Civ Proc 2470.1.

D.N.J. 1992. For summary judgment purposes, "material fact" does not have to be element of movant's prima facie case; rather, it can be any fact that affect outcome of action under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Stoeeco Development, Ltd. v. Department of Army Corps of Engineers of U.S.*, 792 F.Supp. 339.—Fed Civ Proc 2470.1.

D.N.J. 1989. A "material fact," for purposes of securities fraud claim, is one which would, if disclosed under circumstances of relevant transaction, have had substantial likelihood of affecting reasonable shareholder's deliberations concerning transaction. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Jaroslavic v. Engelhard Corp.*, 704 F.Supp. 1296.—Sec Reg 60.28(11).

E.D.N.Y. 1995. No genuine issue exists as to any "material fact," only those facts which might affect outcome of particular claim, unless there is sufficient evidence favoring nonmoving party for jury to return verdict for that party; if evidence is merely colorable, or is not significantly probative, summary judgment may be granted.—*Kalika v. Stern*, 911 F.Supp. 594.—Fed Civ Proc 2470.1, 2546.

N.D.N.Y. 1993. Mere existence of some alleged factual dispute will not defeat motion for summary judgment; there must be no genuine issue of "material fact," i.e., fact which might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Wilson v. Consolidated Rail Corp.*, 810 F.Supp. 411, reconsideration denied 815 F.Supp. 585.—Fed Civ Proc 2470.1.

S.D.N.Y. 1996. "Material fact" as would preclude grant of summary judgment is one that might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Joseph Victori Wines, Inc. v. Vina Santa Carolina S.A.*, 933 F.Supp. 347.—Fed Civ Proc 2470.1.

S.D.N.Y. 1996. For purposes of motion for summary judgment, "material fact" is one that might affect outcome of suit under governing law, and no genuine issue for trial exists unless there is sufficient evidence favoring nonmoving party for reasonable jury to return verdict for that party.—*Rohman v. Chemical Leaman Tank Lines, Inc.*, 923 F.Supp. 42.—Fed Civ Proc 2470.1.

S.D.N.Y. 1969. "Material fact" within Securities Exchange Act provision prohibiting making of untrue statements of material fact or engaging in fraudulent practices in connection with tender offer or request or invitation for tender include not only

information disclosing earnings and distributions of company, but also those facts which affect probable future of company and those which may affect desire of investors to buy, sell, or hold company's securities. Securities Exchange Act of 1934, § 14(e), 15 U.S.C.A. § 78n(e).—Butler Aviation Intern., Inc. v. Comprehensive Designers, Inc., 307 F.Supp. 910, affirmed 425 F.2d 842.—Sec Reg 60.46.

S.D.N.Y. 1967. A "material fact" which a corporate insider purchasing stock from outsider must disclose is one which a reasonable man would attach importance to in determining his choice whether to make the sale or not. Securities Exchange Act of 1934, §§ 1 et seq., 10, 27, 15 U.S.C.A. § 78a et seq., 78j, 78aa; Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a).—Ross v. Licht, 263 F.Supp. 395.—Corp 187, 316(3); Sec Reg 60.28(11).

S.D.N.Y. 1967. In determining whether proxy statement submitted to stockholders for approval of sale of corporate assets misstated or omitted any "material fact" within Securities Exchange Act and regulations thereunder, the quoted term means a fact which, if disclosed to stockholders, would normally be expected to influence a reasonable stockholder in voting on proposal for sale of corporation's assets; the test applicable is whether fact claimed to have been misstated or omitted was of such a nature that it could normally be expected to lead a reasonable stockholder not to vote in favor of proposal for sale of assets. Securities Exchange Act of 1934, §§ 10(b), 14(a), 15 U.S.C.A. §§ 78j(b), 78n(a).—Richland v. Crandall, 262 F.Supp. 538.—Corp 198(3); Sec Reg 49.22(2).

S.D.N.Y. 1949. Testimony of a witness may not be rejected by the jury arbitrarily but the jury are privileged to reject all the testimony of a witness who has willfully testified falsely to a "material fact", and within this rule a "material fact" includes facts bearing on credibility of the witness as well as those bearing directly on the issues in the case so that the entire testimony of a witness who has willfully falsified with respect to any fact going to his credibility may be disregarded.—U.S. v. Foster, 9 F.R.D. 367.—Crim Law 553.

W.D.N.Y. 1990. On motion for summary judgment, "material fact" is one that might affect outcome of suit under governing law; factual disputes that are irrelevant or unnecessary will not be counted. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Westwood Pharmaceuticals, Inc. v. National Fuel Gas Distribution Corp., 737 F.Supp. 1272, reconsideration denied 767 F.Supp. 456, affirmed 964 F.2d 85.—Fed Civ Proc 2470.1.

N.D. Ohio 1998. "Material fact", for summary judgment purposes, is one whose resolution will ultimately effect determination of case.—In re McKenzie, 225 B.R. 377.—Fed Civ Proc 2470.1.

E.D.Pa. 1993. Arrest as war crimes suspect was "material fact," for purposes of determining whether failure to disclose arrest on naturalization application form amounted to willful misrepresentation or concealment of material fact, as would warrant

revocation of citizenship; concealment of arrest would have influenced decision whether to grant application. Immigration and Nationality Act, §§ 316, 316(a), 340(a), 8 U.S.C.A. §§ 1427, 1427(a), 1451(a).—U.S. v. Schiffer, 831 F.Supp. 1166, affirmed 31 F.3d 1175.—Aliens 71(7).

E.D.Pa. 1993. To succeed on motion for summary judgment, moving party must establish that no genuine issue of material fact remains in dispute; issue is "genuine issue" only if there is sufficient evidence for reasonable jury to find for nonmoving party and factual dispute involves "material fact" only if it might affect outcome of action under governing law.—Garner v. Township of Wrightstown, 819 F.Supp. 435, affirmed 16 F.3d 403.—Fed Civ Proc 2470, 2470.1.

E.D.Pa. 1992. "Material fact" for summary judgment purposes is one that might affect outcome of suit under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Blanding v. Pennsylvania State Police, 811 F.Supp. 1084, affirmed 12 F.3d 1303, rehearing denied.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. Issue involves "material fact" that will preclude summary judgment if evidence supporting asserted fact could lead to jury verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Marshall v. Dunwoody Village, 782 F.Supp. 1034.—Fed Civ Proc 2470.1.

E.D.Pa. 1981. Defendant's misrepresenting his wartime service as a Ukrainian policeman during German occupancy in WW II was a willful misrepresentation of a "material fact" for purpose of Displaced Persons Act as his willing membership in Ukrainian police and a participant in its activities would have made him ineligible for displaced person status as a member of a movement engaged in persecution of civilians. Displaced Persons Act of 1948, §§ 10, 13 as amended 50 U.S.C.A. App. §§ 1959, 1962.—U.S. v. Osidach, 513 F.Supp. 51.—Aliens 53.10(3).

M.D.Pa. 1995. In motions for summary judgment, "material fact" is one which might affect outcome of suit under relevant substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Boykin v. Bloomsburg University of Pennsylvania, 893 F.Supp. 378, affirmed 91 F.3d 122, certiorari denied *Mirin v. Eyerly*, 117 S.Ct. 739, 519 U.S. 1078, 136 L.Ed.2d 678.—Fed Civ Proc 2470.1.

M.D.Pa. 1994. On motion for summary judgment, "material fact" is one for which proof of its existence or nonexistence would effect outcome of lawsuit under law applicable to case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Harry v. U.S. Postal Service, 867 F.Supp. 1199, affirmed 60 F.3d 815.—Fed Civ Proc 2470.1.

M.D.Pa. 1993. A "material fact" is fact which will affect outcome of trial under governing law.—Saini v. Bloomsburg University Faculty, 826 F.Supp. 882.—Fed Civ Proc 2470.1.

W.D.Pa. 1988. For purpose of rule that summary judgment is proper when pleadings and evidence on file show that there is no genuine issue as

to any material fact and moving party is entitled to judgment as matter of law, "material fact" is one whose resolution will affect ultimate determination of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*M. Leff Radio Parts, Inc. v. Mattel, Inc.*, 706 F.Supp. 387.—Fed Civ Proc 2470.1.

D.Puerto Rico 1998. "Material fact," for purposes of summary judgment motion, means that fact is one that might affect outcome of suit under governing law.—*Vega v. Crowley American Transport, Inc.*, 178 F.R.D. 351.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. "Material fact," which will preclude summary judgment if at issue, is one that might affect outcome of suit under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Rodriguez-Suris v. Montesinos*, 935 F.Supp. 71, vacated 123 F.3d 10, rehearing and suggestion for rehearing denied.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. For summary judgment purposes, "material fact" is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Shelley v. Trafalgar House Public Ltd. Co.*, 918 F.Supp. 515, reconsideration denied 973 F.Supp. 84.—Fed Civ Proc 2470.1.

D.Puerto Rico 1996. Summary judgment is appropriate where, after drawing all reasonable inferences in favor of party against whom summary judgment is sought, there is not slightest doubt as to whether genuine issue of material fact exists; "genuine issue" is one that is dispositive, and which consequently must be decided at trial, while "material fact" is defined by substantive law and is one which affects outcome of suit and must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Colon v. Ramirez*, 913 F.Supp. 112, affirmed 107 F.3d 62.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. For purposes of motion for summary judgment "material fact," which is defined by substantive law, is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Boschette v. Buck*, 914 F.Supp. 769.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. For summary judgment purposes "material fact," which is defined by the substantive law, is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Ortiz Pinero v. Rivera Acevedo*, 900 F.Supp. 574, affirmed 84 F.3d 7.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. Summary judgment is appropriate where, after drawing all reasonable inferences in favor of party against whom summary judgment is sought, there is not slightest doubt as to whether "genuine issue" of "material fact" exists; "genuine issue" is one that is dispositive and consequently must be decided at trial, while "material fact," which is defined by substantive law, is one which affects outcome of suit and must be resolved before attending to related legal issues. Fed.Rules

Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Lazarini v. U.S.*, 898 F.Supp. 40, affirmed 89 F.3d 823.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. For purposes of summary judgment determination, "material fact" is fact which, under applicable substantive law, may affect result of case, and there is "genuine issue" only if there is conflicting evidence that requires trial to resolve discrepancy. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Leslie v. Construcciones Aeronauticas, S.A. (CASA)*, 896 F.Supp. 243.—Fed Civ Proc 2470.1.

D.Puerto Rico 1995. "Material fact," which is defined by substantive law, is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Taber Partners I v. Insurance Co. of North America, Inc.*, 875 F.Supp. 81.—Fed Civ Proc 2470.1.

D.Puerto Rico 1994. In summary judgment proceeding, "material fact" is one which might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Nazario-Velazquez v. del Valle*, 842 F.Supp. 602.—Fed Civ Proc 2470.1.

D.Puerto Rico 1993. "Material fact," for summary judgment purposes, is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Hopgood v. Merrill Lynch, Pierce, Fenner & Smith*, 839 F.Supp. 98, affirmed 36 F.3d 1089.—Fed Civ Proc 2470.1.

D.Puerto Rico 1993. A "material fact" which precludes summary judgment and which is defined by substantive law, is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Aponte v. Puerto Rico Marine Management, Inc.*, 830 F.Supp. 95, affirmed 21 F.3d 419.—Fed Civ Proc 2470.1.

D.Puerto Rico 1991. "Material fact" for purposes of motion for summary judgment is one which affects outcome of suit and which must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*East Texas Distributing, Inc. v. El Gran Video Corp.*, 787 F.Supp. 20.—Fed Civ Proc 2470.1.

D.Puerto Rico 1991. For purposes of summary judgment, a "genuine issue" is one that is dispositive and thus must be decided at trial, and a "material fact" is one which affects the outcome of the suit and must be resolved before attending to related legal issues. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*An-Port, Inc. v. MBR Industries, Inc.*, 772 F.Supp. 1301, motion denied 142 F.R.D. 47.—Fed Civ Proc 2470.1.

D.Puerto Rico 1986. Although summary judgment should not be entered when there is the slightest doubt as to any material fact, it is to be entered when opposing party had not raised by affidavits of persons with personal knowledge a single issue over a material fact, a "material fact" being one which affects outcome of the litigation.

Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Treco, Inc. v. Marina de Palmas, Inc., 626 F.Supp. 335.—Fed Civ Proc 2470.1, 2544.

D.R.I. 1973. A “material fact” which a person engaged in sale of securities is under a strict duty to disclose is any fact which a reasonable man would attach importance [to fact not disclosed] in determining his choice of action in transaction in question. Securities Act of 1933, §§ 5(a, c), 17(a) as amended 15 U.S.C.A. §§ 77e(a, c), 77q(a); Securities Exchange Act of 1934, § 10(b) as amended 15 U.S.C.A. § 78j(b).—Securities and Exchange Commission v. M. A. Lundy Associates, 362 F.Supp. 226.—Sec Reg 60.28(11).

W.D.Tenn. 1995. For purposes of intentional misrepresentation claim against landlord, requirement that the representation pertain to a “material fact” is satisfied if fact is one that a potential renter would take into consideration in deciding whether to lease.—Lord v. Saratoga Capital, Inc., 920 F.Supp. 840.—Fraud 18.

D.Vt. 1993. “Material fact” is genuinely in dispute for summary judgment purposes if reasonable jury could return verdict in favor of non-moving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Marcoux-Norton v. Kmart Corp., 907 F.Supp. 766.—Fed Civ Proc 2470.1.

E.D.Va. 1994. Fact is “material fact,” for summary judgment purposes, if proof of its existence or nonexistence would affect outcome of case, and issue is “genuine issue” if reasonable jury might return verdict in favor of nonmoving party on basis of such issue. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Pruitt v. Wilder, 840 F.Supp. 414.—Fed Civ Proc 2470.1.

E.D.Wis. 1996. “Material fact,” genuine issue as to which will preclude entry of summary judgment, is fact which, under governing substantive law, might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Zimbauer v. Milwaukee Orthopaedic Group, Ltd., 920 F.Supp. 959.—Fed Civ Proc 2470.1.

E.D.Wis. 1995. For purposes of defeating properly supported motion for summary judgment, “material fact” is one that is outcome determinative under governing law, while “genuine issue” as to that material fact is raised only if evidence is such that reasonable jury could return verdict for non-moving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Beloit Beverage Co. v. Winterbrook Corp., 900 F.Supp. 1097.—Fed Civ Proc 2470.1.

E.D.Wis. 1994. While “material fact” is one that is outcome determinative under the governing law, genuine issue as to that material fact is raised only if the evidence is such that reasonable jury could return verdict for nonmoving party. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Pecor v. Northwestern Nat. Ins. Co., 869 F.Supp. 651.—Fed Civ Proc 2470.1.

D.Wyo. 1988. A “material fact” which precludes granting of summary judgment is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Jime-

nez v. Colorado Interstate Gas Co., 690 F.Supp. 977.—Fed Civ Proc 2470.1.

Bkrtcy.D.Conn. 1996. Debtor, acting as borrower, has duty to divulge all material facts to lender and debtor’s silence regarding material fact can constitute false representation for purposes of fraud discharge exception; “material fact” is one touching upon essence of transaction. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Roberti, 201 B.R. 614.—Bankr 3353(4).

Bkrtcy.S.D.Fla. 1993. Bank’s failure to include any analysis of tax consequences of its proposed reorganization plan was shown to be omission of “material fact,” on which trustee in liquidating Chapter 11 case justifiably relied, and thus was “negligent misrepresentation” under Florida law, for which bank was responsible to trustee; both bank officer and attorney responsible for investigating tax consequences admitted that no provision was made for tax consequences, thus making bank’s representation concerning feasibility of plan and trustee’s obligations under plan materially false, and court and creditors acted in total ignorance of obligations, because no tax analysis was included and no provision for payment of taxes was made. Bankr.Code, 11 U.S.C.A. § 1129(d).—Smith v. Bank of New York, 161 B.R. 302.—Banks 100.

Bkrtcy.N.D.Ill. 1994. “Material fact,” for summary judgment purposes, is one that must be decided to resolve substantive issue that is subject of motion. Fed.Rules Bankr.Proc.Rule 7056, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Miller, 175 B.R. 969.—Bankr 2164.1; Fed Civ Proc 2470.1.

Bkrtcy.N.D.Ill. 1994. For summary judgment purposes, “material fact” is one that must be decided in order to resolve substantive issue that is subject of motion. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Bachner, 165 B.R. 875.—Fed Civ Proc 2470.1.

Bkrtcy.D.Md. 1988. Chapter 7 debtor’s false statements under oath that financial records had been destroyed was false statement of “material fact” sufficient to warrant denial of discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Ball, 84 B.R. 410.—Bankr 3282.1.

Bkrtcy.D.Mass. 1995. For summary judgment purposes, “material fact” is one which has potential to affect outcome of suit under applicable law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Curran, 183 B.R. 9.—Fed Civ Proc 2470.1.

Bkrtcy.N.D.Ohio 1995. “Material fact,” such as may preclude entry of summary judgment, is one which might affect outcome of suit under governing substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—In re Bell, 181 B.R. 311.—Fed Civ Proc 2470.1.

Fed.Cl. 1996. For purposes of summary judgment motion, “material fact” is fact that could make difference in outcome of case. RCFC, Rule 56(c), 28 U.S.C.A.—Janowsky v. U.S., 36 Fed.Cl. 148, vacated 133 F.3d 888.—Fed Cts 1120.

Fed.Cl. 1996. On motion for summary judgment, genuine issue of "material fact" is one that would change outcome of litigation. RCFC, Rule 56(c), 28 U.S.C.A.—Bankers Trust New York Corp. v. U.S., 36 Fed.Cl. 30, reversed 225 F.3d 1368, rehearing and rehearing denied.—Fed Cts 1120.

Fed.Cl. 1996. Summary judgment is appropriate when there is no genuine issue of material fact and moving party is entitled to judgment as a matter of law; "material fact" is fact that could make a difference in the outcome of the case. RCFC, Rule 56(c), 28 U.S.C.A.—Dan Rice Const. Co. v. U.S., 36 Fed.Cl. 1.—Fed Cts 1120.

Fed.Cl. 1996. A "material fact," for summary judgment purposes, is a fact that could make a difference in outcome of the case. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—C & H Commercial Contractors, Inc. v. U.S., 35 Fed.Cl. 246.—Fed Cts 1120.

Fed.Cl. 1994. Party is entitled to summary judgment as matter of law if, taking all inferences from pleadings in light most favorable to opposing party, there is no genuine issue as to any "material fact," which is fact that would change outcome in litigation. RCFC, Rule 56(c), 28 U.S.C.A.—Brown v. U.S., 31 Fed.Cl. 585.—Fed Cts 1120.

Fed.Cl. 1993. "Material fact," for purposes of summary judgment, is one which will make difference in result of case. RCFC, Rule 56(c), 28 U.S.C.A.—Brown v. U.S., 30 Fed.Cl. 23, reversed 73 F.3d 1100.—Fed Cts 1120.

Cl.Ct. 1992. Summary judgment is appropriate when there are no genuine issues of material fact and moving party is entitled to judgment as matter of law; "material fact" is fact that could make difference in outcome of case. U.S.Cl.Ct.Rule 56(c), 28 U.S.C.A.—Young Enterprises, Inc. v. U.S., 26 Cl.Ct. 858.—Fed Cts 1120.

Cl.Ct. 1991. "Material fact," on which genuine dispute will preclude summary judgment, is one which will make a difference in result of case.—Dehne v. U.S., 23 Cl.Ct. 606, vacated 970 F.2d 890.—Fed Cts 1120.

Cl.Ct. 1991. Summary disposition requires that no genuine dispute exist as to any material fact, so that moving party is entitled to judgment as matter of law; "material fact" is fact that will make some difference in outcome of case.—Circle K Corp. v. U.S., 23 Cl.Ct. 161, vacated 23 Cl.Ct. 659, vacated 1996 WL 904545, superseded 23 Cl.Ct. 665, vacated 1996 WL 904545.—Fed Civ Proc 2470, 2470.1.

Cl.Ct. 1991. Claim for rescission or reformation of contract based on mutual mistake must involve material fact, and "material fact" is one in existence at time of agreement, one that involves basic assumption of contract, and one that materially affects contract performance.—Hartle v. U.S., 22 Cl. Ct. 843.—Contracts 93(5); Ref of Inst 19(1).

Cl.Ct. 1990. On motion for summary judgment, "material fact" is one which will make difference in result of case; substantive law identifies facts that are material. U.S.Cl.Ct.Rule 56, 28 U.S.C.A.—

Cloutier v. U.S., 19 Cl.Ct. 326, affirmed 937 F.2d 622.—Fed Cts 1120.

Cl.Ct. 1989. "Material fact," such as will prevent granting of summary judgment, is one which will make difference in result to be reached.—Engle Investors v. U.S., 21 Cl.Ct. 543.—Fed Cts 1120.

Cl.Ct. 1989. "Material fact," for summary judgment purposes, is one which will make difference in result of case.—Diebold, Inc. v. U.S., 16 Cl.Ct. 193, affirmed 891 F.2d 1579, rehearing denied, and suggestion for rehearing declined, certiorari denied 111 S.Ct. 73, 498 U.S. 823, 112 L.Ed.2d 47.—Fed Cts 1120.

Cl.Ct. 1984. A "material fact," for purpose of summary judgment in Claims Court is one which will make a difference in the result of the case. U.S.Cl.Ct.Rule 56, 28 U.S.C.A.—Singleton v. U.S., 6 Cl.Ct. 156.—Fed Cts 1120.

Ala. 2001. A "material fact" is a fact that will induce action or inaction by the party complaining of fraudulent suppression. Code 1975, § 6-5-102.—Ex parte Liberty Nat. Life Ins. Co., 797 So.2d 457.—Fraud 18.

Ala. 2000. A "material fact," as required to prove fraudulent suppression of a material fact, is a fact of such a nature as to induce action on the part of the complaining party.—Callens v. Jefferson County Nursing Home, 769 So.2d 273, rehearing denied.—Fraud 18.

Ala. 1994. Fact that automobile sold by dealership to buyers was repainted to remedy defect in paint finish was "material fact" which significantly affected fair market value of car and whose importance was fairly commonly known among public, and thus, manufacturer's suppression of fact that car was repainted gave rise to claim for intentional suppression of material fact. Code 1975, § 6-5-102.—Hines v. Riverside Chevrolet-Olds, Inc., 655 So.2d 909, rehearing denied.—Fraud 18.

Ala. 1994. Mere statement of opinion or prediction as to events to occur in future is not statement of "material fact" upon which individuals have right to rely and, therefore, it will not support fraud claim. Code 1975, § 6-5-101.—Crowne Investments, Inc. v. Bryant, 638 So.2d 873.—Fraud 11(1), 12.

Ala. 1992. "Material fact" element of claim of fraudulent misrepresentation is fact of such nature as to induce action on part of complaining party.—Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc., 611 So.2d 238.—Fraud 18.

Ala. 1987. Defendant makes false representation concerning "material fact," so as to be guilty of fraud, where representation induces action on part of complaining party.—Harper v. First Alabama Bank of Dothan, 514 So.2d 1366.—Fraud 20.

Ala. 1985. A "material fact," within meaning of fraud statutes [Code 1975, §§ 6-5-101, 6-5-102], is fact of such nature as to induce action on part of complaining party; it is not necessary that misrep-

resentation of such fact be sole inducement.—*Bank of Red Bay v. King*, 482 So.2d 274.—Fraud 18.

Ala. 1983. “Material fact” under statute governing cause of action for fraud is fact of such nature as to induce action on part of complaining party. Code 1975, § 6-5-102.—*Crigler v. Salac*, 438 So.2d 1375.—Fraud 18.

Ala.Civ.App. 2001. “Material fact,” for purposes of a claim of fraudulent suppression of a material fact, is a fact that will induce action or inaction by the other party.—*Banks v. SCI Alabama Funeral Services, Inc.*, 801 So.2d 20.—Fraud 18.

Ala.Civ.App. 1997. Generally, “material fact,” misrepresentation of which is required to support fraud claim, is one that is sufficient to induce party to take action. Code 1975, § 13A-11-124.—*Gilliam v. Akzo Nobel Industrial Fibers, Inc.*, 710 So.2d 445, rehearing denied, and certiorari denied.—Fraud 18.

Ala.Civ.App. 1997. “Material fact” for purposes of fraudulent misrepresentation action is fact of such nature as to induce action on part of complaining party.—*Thompson v. United Companies Lending Corp.*, 699 So.2d 169, rehearing denied.—Fraud 18.

Ala.Civ.App. 1996. For purposes of fraudulent suppression claim, “material fact” is fact that will induce action in complaining party.—*Bramlett v. Adamson Ford, Inc.*, 717 So.2d 772, reversed Ex parte Ford Motor Credit Co., 717 So.2d 781, on remand 717 So.2d 790.—Fraud 18.

Ala.Civ.App. 1996. “Material fact,” for purposes of fraud claim, is one that would induce person to act.—*LaCoste v. SCI Alabama Funeral Services, Inc.*, 689 So.2d 76, rehearing denied, and certiorari quashed, appeal after remand 733 So.2d 886, rehearing denied, reversed Ex parte LaCoste, 733 So.2d 889, rehearing denied, on remand 733 So.2d 897.—Fraud 18.

Ala.Civ.App. 1996. “Material fact” as element of claim of fraudulent suppression of material fact is fact that will induce action by complaining party.—*Pitts v. Boody*, 688 So.2d 832, rehearing denied.—Fraud 18.

Ala.Civ.App. 1986. “Material fact” is fact that induces action by complaining party. Code 1975, § 6-5-101.—*Cory v. Carpenter*, 510 So.2d 546, certiorari denied Ex parte Carpenter, 510 So.2d 549.—Fraud 18.

Ala.Civ.App. 1981. “Material fact” within meaning of statute, which provides that misrepresentations of a material fact, if made by mistake and innocently acted on by the opposite party, constitute legal fraud, is a fact likely to induce action on the part of the complaining party. Code 1975, § 6-5-101.—*Cook v. Brown*, 393 So.2d 1016, appeal after remand 408 So.2d 143, appeal after remand 428 So.2d 59.—Fraud 18.

Alaska 1980. A “material fact” is a fact which could reasonably be expected to influence someone’s judgment or conduct concerning a transac-

tion.—*Cousineau v. Walker*, 613 P.2d 608.—Contracts 94(2).

Cal.App. 1 Dist. 1968. Where vendor’s real estate agent is obligated to disclose to his principal the identity of purchaser, and where the purchaser is not the agent but occupies with him such blood, marital or other relationship which would suggest a reasonable possibility that the agent could be indirectly acquiring an interest in the property himself, such relationship is a “material fact” which the agent must disclose to his principal.—*Loughlin v. Idora Realty Co.*, 66 Cal.Rptr. 747, 259 Cal.App.2d 619.—Brok 34.

Cal.App. 4 Dist. 1997. To be “material fact,” for purposes of motion for summary judgment, fact must relate to some claim or defense in issue under the pleadings. West’s Ann.Cal.C.C.P. § 437c.—*Zavala v. Arce*, 68 Cal.Rptr.2d 571, 58 Cal.App.4th 915.—Judgm 181(2).

Colo. 1992. A “material fact,” the absence of which will entitle moving party to summary judgment, is fact that will affect outcome of case. Rules Civ.Proc., Rule 56(c).—*Peterson v. Halsted*, 829 P.2d 373.—Judgm 181(2).

Colo.App. 2000. For purposes of a summary judgment motion, a “material fact” is one that affects the outcome of the case. Rules Civ.Proc., Rule 56.—*Keybank, Nat. Ass’n v. Mascarenas*, 17 P.3d 209.—Judgm 181(2).

Colo.App. 2000. A “material fact,” such as would preclude summary judgment, is one that will affect the outcome of the case.—*Decibel Credit Union v. Pueblo Bank & Trust Co.*, 996 P.2d 784.—Judgm 181(2).

Colo.App. 1997. “Material fact,” for summary judgment purposes, is one that affects outcome of litigation.—*Cooperative Finance Ass’n, Inc. v. B & J Cattle Co.*, 937 P.2d 915.—Judgm 181(2).

Colo.App. 1997. “Material fact,” for purposes of summary judgment, is one that affects outcome of case, and determination whether there exists genuine issue as to any material fact is itself question of law.—*Haller v. Hawkeye-Security Ins. Co.*, 936 P.2d 601, rehearing denied.—Judgm 181(2), 186.

Colo.App. 1995. “Material fact,” for summary judgment purposes, is fact that will affect outcome of case.—*Sender v. Powell*, 902 P.2d 947.—Judgm 181(2).

Colo.App. 1995. “Material fact” in summary judgment context is fact that will affect outcome of the case.—*Vectra Bank of Englewood v. Bank Western*, 890 P.2d 259.—Judgm 181(2).

Colo.App. 1994. “Material fact” for purpose of summary judgment, is fact that will affect outcome of case. Rules Civ.Proc., Rule 56(c).—*Graven v. Vail Associates, Inc.*, 888 P.2d 310, rehearing denied, and certiorari granted, reversed 909 P.2d 514, as modified on denial of rehearing.—Judgm 181(2).

Colo.App. 1991. Change in policy regarding mandatory parole of sex offenders was not “materi-

al fact" which justified postconviction relief by vacating original sentence and resentencing defendant to lesser term equal to sentencing court's original intended sentence; sentencing judge has no enforceable expectations with respect to actual release date of sentenced defendant short of his statutory term. Rules Crim.Proc., Rule 35(c)(2)(V); West's C.R.S.A. § 17-2-201(5)(a).—*People v. Sorenson*, 824 P.2d 38, certiorari denied.—Crim Law 1557(4); Sent & Pun 2262.

Conn. 2001. For summary judgment purposes, a "material fact" is a fact which will make a difference in the result of the case. Practice Book 1998, § 17-49.—*H.O.R.S.E. of Connecticut, Inc. v. Town of Washington*, 783 A.2d 993, 258 Conn. 553.—Judgm 181(2).

Conn. 1975. A "material fact," for purposes of rule that summary judgment may be rendered only if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any "material fact" and that moving party is entitled to judgment as a matter of law, is one which will make a difference in the result of the case. Practice Book 1963, § 303.—*State ex rel. Commission for Higher Ed. v. Wethersfield School of Law, Inc.*, 362 A.2d 1371, 169 Conn. 171.—Judgm 181(2).

Conn. 1969. "Material fact" for purposes of summary judgment procedure is fact which will make difference in result of case. Practice Book 1963, § 303.—*United Oil Co. v. Urban Redevelopment Commission of City of Stamford*, 260 A.2d 596, 158 Conn. 364.—Judgm 181(2).

Conn.App. 2001. "Material fact," for purposes of a motion for summary judgment, is a fact that will make a difference in result of case. Practice Book 1998, § 17-49.—*Jaser v. Fischer*, 783 A.2d 28, 65 Conn.App. 349.—Judgm 181(2).

Conn.App. 2000. Under summary judgment standard, a "material fact" is a fact that will make a difference in result of case. Practice Book 1998, § 17-49.—*Mountindale Condominium Ass'n, Inc. v. Zappone*, 757 A.2d 608, 59 Conn.App. 311, certification denied 762 A.2d 903, 254 Conn. 947.—Judgm 181(2).

Conn.App. 2000. Under summary judgment rule, a "material fact" is a fact that will make a difference in result of a case. Practice Book 1998, § 17-49.—*Doty v. Shawmut Bank*, 755 A.2d 219, 58 Conn.App. 427.—Judgm 181(2).

Conn.App. 2000. Under summary judgment standard, under which summary judgment is precluded if there exists genuine issue of material fact, "material fact" is a fact that will make a difference in the result of the case. Practice Book 1998, § 17-49.—*Lunn v. Cummings and Lockwood*, 743 A.2d 653, 56 Conn.App. 363.—Judgm 181(2).

Conn.App. 1999. A "material fact," for purposes of determining whether summary judgment is precluded, is fact that will make difference in result of case.—*Kramer v. Petisi*, 728 A.2d 1097, 53 Conn. App. 62, certification denied 733 A.2d 229, 249 Conn. 919.—Judgm 181(2).

Conn.App. 1998. A "material fact," the existence of which will preclude summary judgment, is a fact that will make a difference in the result of the case. Practice Book 1998, § 17-49.—*Brunswick v. Safeco Ins. Co.*, 711 A.2d 1202, 48 Conn. App. 699, certification denied 719 A.2d 1168, 247 Conn. 923.—Judgm 181(2).

Conn.App. 1998. For summary judgment purposes, "material fact" is fact that will make a difference in the result of the case.—*Solomon v. Gilmore*, 707 A.2d 746, 48 Conn.App. 80, certification granted 714 A.2d 11, 244 Conn. 925, reversed in part 731 A.2d 280, 248 Conn. 769.—Judgm 181(2).

Conn.App. 1997. For purposes of rule precluding change in workers' compensation commissioner's finding unless record discloses that finding includes facts found without evidence or fails to include material facts which are admitted or undisputed, "material fact" is one that will affect outcome of case. C.G.S.A. § 31-275 et seq.—*Hanson v. Transportation General, Inc.*, 696 A.2d 1026, 45 Conn.App. 441, certification granted in part 701 A.2d 329, 243 Conn. 914, affirmed 716 A.2d 857, 245 Conn. 613.—Work Comp 1759.

Conn.App. 1996. For summary judgment purposes, "material fact" is one that makes difference in outcome of case. Practice Book 1978, § 384.—*Union Trust Co. v. Jackson*, 679 A.2d 421, 42 Conn.App. 413.—Judgm 181(2).

Conn.App. 1996. Appeals Court will not change finding of workers' compensation commissioner unless record discloses that finding includes facts found without evidence or fails to include material facts which are admitted or undisputed; "material fact" is one that will affect outcome of the case, and a fact is not admitted or undisputed merely because it is uncontradicted.—*Simmons v. Bonhotel*, 670 A.2d 874, 40 Conn.App. 278.—Work Comp 1939.3.

Conn.App. 1995. "Material fact," question about which will preclude entry of summary judgment, is one which will make difference in result of case.—*Picataggio v. Romeo*, 654 A.2d 382, 36 Conn.App. 791.—Judgm 181(2).

Conn.App. 1993. A "material fact" for purposes of changing finding of Workers' Compensation Commissioner is one that will affect the outcome of the case.—*Tovish v. Gerber Electronics*, 630 A.2d 136, 32 Conn.App. 595, certification granted in part 632 A.2d 707, 227 Conn. 930, appeal dismissed 642 A.2d 721, 229 Conn. 587.—Work Comp 1759.

Del.Supr. 1997. When seeking stockholder action, directors must disclose all material reasonably available facts, with "material fact" defined as one reasonable stockholder would find relevant in deciding how to vote.—*Klang v. Smith's Food & Drug Centers, Inc.*, 702 A.2d 150.—Corp 310(1).

D.C. 1994. For summary judgment purposes, "material fact" is one which, under applicable substantive law, is relevant and may affect outcome of case.—*Rajabi v. Potomac Elec. Power Co.*, 650 A.2d 1319.—Fed Cts 1055.

Fla.App. 1 Dist. 1987. A "material fact," for purposes of summary judgment motion, is a fact that is essential to resolution of legal questions raised in case.—*State of Fla. Dept. of Environmental Regulation v. C.P. Developers, Inc.*, 512 So.2d 258.—Judgm 181(2).

Fla.App. 2 Dist. 1985. For purposes of element of actionable negligent misrepresentation requiring that misrepresentation be one of "material fact," a fact is material if, but for alleged nondisclosure or misrepresentation, complaining party would not have entered into transaction.—*Atlantic Nat. Bank of Florida v. Vest*, 480 So.2d 1328, review denied 491 So.2d 281, review denied 508 So.2d 16.—*Fraud* 18.

Fla.App. 4 Dist. 2000. A "material fact," for summary judgment purposes, is a fact that is essential to the resolution of the legal questions raised in the case.—*Continental Concrete, Inc. v. Lakes at La Paz III Ltd. Partnership*, 758 So.2d 1214.—Judgm 181(2).

Hawai'i App. 1998. "Material fact," for purposes of summary judgment motion, is one upon which the outcome of the litigation depends. *Rules Civ.Proc.*, Rule 56(c).—*Mednick v. Davey*, 959 P.2d 439, 87 Hawai'i 450.—Judgm 181(2).

Idaho 1998. A "material fact", for summary judgment purposes, is one upon which the outcome of the case may be different.—*Peterson v. Romine*, 960 P.2d 1266, 131 Idaho 537.—Judgm 181(2).

Idaho 1984. Number of hours worked for employer, independent of any compensation received, constitutes "material fact" within meaning of statute which denies unemployment benefits for 52 weeks to claimant who has willfully failed to report material fact in order to obtain benefits, since number of hours worked is important in determining whether week for which benefits are sought was "compensable week." (Per Huntley, J., with one Justice concurring and Chief Justice concurring in result.) *I.C.* §§ 72-1312, 72-1366(l).—*Smith v. State, Dept. of Employment*, 691 P.2d 1240, 107 Idaho 625.—*Social S* 731.

Idaho 1979. Unemployment compensation claimant's failure to report job offer involved "material fact" despite claimant's contention that work offered was unsuitable or that, if work was suitable, claimant had good cause to refuse it. *I.C.* §§ 72-1366(j), 72-1369.—*Meyer v. Skyline Mobile Homes*, 589 P.2d 89, 99 Idaho 754.—*Social S* 472.5.

Ill. 1996. "Material fact," omission or concealment of which will constitute consumer fraud under Illinois Consumer Fraud Act, exists where buyer would have acted differently knowing the information, or if it concerned type of information upon which buyer would be expected to rely in making decision whether to purchase. *S.H.A.* 815 ILCS 505/2.—*Connick v. Suzuki Motor Co., Ltd.*, 221 Ill.Dec. 389, 675 N.E.2d 584, 174 Ill.2d 482, rehearing denied.—*Cons Prot* 4.

Ill.App. 1 Dist. 2001. For purposes of the Illinois Fraud and Deceptive Practices Act (Consumer Fraud Act), a "material fact" exists where a buyer

would have acted differently knowing the information, or if it concerned the type of information on which a buyer would be expected to rely in making a decision regarding whether to purchase the product. *S.H.A.* 815 ILCS 505/2.—*Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 259 Ill.Dec. 586, 759 N.E.2d 66, 325 Ill.App.3d 1139.—*Cons Prot* 6.

Ill.App. 1 Dist. 1997. "Material fact" in the conduct of trade or commerce will constitute consumer fraud, exists where buyer would have acted differently knowing the information, or if it concerned type of information on which buyer would be expected to rely in making decision whether to purchase product. *S.H.A.* 815 ILCS 505/2.—*Perona v. Volkswagen of America, Inc.*, 225 Ill.Dec. 868, 684 N.E.2d 859, 292 Ill.App.3d 59.—*Cons Prot* 34.

Ill.App. 1 Dist. 1995. In class action under Consumer Fraud Act, it is intent of seller rather than individual reliance of buyer that is dispositive, and seller is only liable for failure to disclose "material fact" if it intended that consumer rely on omission; fact is material if other party would have acted differently had he known about it or if it relates to matter on which plaintiff could be expected to rely in deciding to engage in conduct in question. *S.H.A.* 815 ILCS 505/2.—*Perona v. Volkswagen of America, Inc.*, 213 Ill.Dec. 328, 658 N.E.2d 1349, 276 Ill.App.3d 609, appeal denied; judgment vacated 223 Ill.Dec. 40, 678 N.E.2d 1048, 172 Ill.2d 566, on remand 225 Ill.Dec. 868, 684 N.E.2d 859, 292 Ill.App.3d 59.—*Cons Prot* 34.

Ill.App. 2 Dist. 1999. A "material fact" exists, for purposes of fraud claim under Consumer Fraud and Deceptive Business Practices Act, when a buyer would have acted differently knowing the information, or if it concerned the type of information on which a buyer would be expected to rely in making a decision whether to purchase the product. *S.H.A.* 815 ILCS 505/2.—*Pawlikowski v. Toyota Motor Credit Corp.*, 243 Ill.Dec. 1, 722 N.E.2d 767, 309 Ill.App.3d 550, appeal denied 246 Ill.Dec. 125, 729 N.E.2d 498, 188 Ill.2d 567.—*Cons Prot* 4.

Ill.App. 4 Dist. 2003. For purposes of consumer fraud action, a "material fact" exists where a buyer would have acted differently knowing the information, or if it concerned the type of information upon which a buyer would be expected to rely in making a decision whether to purchase. *S.H.A.* 815 ILCS 505/2.—*Shannon v. Boise Cascade*, 270 Ill.Dec. 805, 783 N.E.2d 1105, 336 Ill.App.3d 533, appeal pending.—*Cons Prot* 4.

Ill.App. 4 Dist. 2000. A "material fact," for purpose of Consumer Fraud and Deceptive Business Practices Act prohibiting deceptive acts or practices involving misrepresentation or concealment, suppression or omission of any material fact, exists where (1) a plaintiff would have acted differently had he or she been aware of the information, or (2) it concerned the type of information upon which he or she would be expected to rely in making a decision to act. *S.H.A.* 815 ILCS 505/2.—*Oliveira v. Amoco Oil Co.*, 244 Ill.Dec. 455, 726 N.E.2d 51, 311 Ill.App.3d 886, rehearing denied, appeal allowed 189 Ill.2d 690, appeal allowed 248 Ill.Dec.

604, 734 N.E.2d 895, 189 Ill.2d 690, reversed in part, vacated in part 267 Ill.Dec. 14, 776 N.E.2d 151, 201 Ill.2d 134, rehearing denied.—Cons Prot 4.

Ind.App. 4 Dist. 1988. For purpose of deciding whether material facts exist which preclude summary judgment, "material fact" is one which may be dispositive of litigation or relevant secondary issue. Trial Procedure Rule 56.—Willsey v. Peoples Federal Sav. and Loan Ass'n of East Chicago, 529 N.E.2d 1199, transfer denied.—Judgm 181(2).

Ind.App. 4 Dist. 1980. For purposes of summary judgment, "material fact" is one which tends to facilitate resolution of any of the issues either for or against party having burden of persuasion on that issue. Rule TR. 56(C).—Fort Wayne Patrolman's Benev. Ass'n, Inc. v. City of Fort Wayne, 408 N.E.2d 1295, rehearing denied 411 N.E.2d 630.—Judgm 181(2).

Ind.App. 3 Dist. 1980. A "material fact," issue of which would preclude summary judgment, is one which may be dispositive of the litigation. Rule TR. 56(E).—French v. Hickman Moving and Storage, 400 N.E.2d 1384.—Judgm 181(2).

Ind.App. 1 Dist. 1978. Purpose of summary judgment rule is to provide a procedural device for prompt disposition of cases where there is no genuine issue of material fact to be determined in a trial, either by a court or a jury; a "material fact" is one which may be dispositive of the case; if any doubt remains as to existence of a genuine issue of material fact, such doubt must be resolved against movant of summary judgment.—Hayes v. Second Nat. Bank of Richmond, 375 N.E.2d 647, 176 Ind. App. 299.—Judgm 178, 181(2), 185(2).

Iowa 1993. Issue of fact is "material fact," precluding summary judgment, only when dispute is over facts that might affect outcome of suit, given applicable governing law.—Farm & City Ins. Co. v. Anderson, 509 N.W.2d 487.—Judgm 181(2).

Kan. 1998. "Material fact," deceptive act in connection with which by supplier will violate Kansas Consumer Protection Act (KCPA), is one to which reasonable person would attach importance in determining his or her choice of action in transaction involved. K.S.A. 60-626(b)(2).—York v. In-Trust Bank, N.A., 962 P.2d 405, 265 Kan. 271.—Cons Prot 4.

Kan. 1974. For purposes of summary judgment, a "material fact" is one on which the controversy may be determined. Rules of Civil Procedure, rule 56, K.S.A. 60-256.—Ebert v. Mussett, 519 P.2d 687, 214 Kan. 62.—Judgm 181(2).

Kan.App. 1998. Fact that a seller of securities has been convicted, in the past, of crimes involving dishonesty is a "material fact" which must be disclosed under criminal securities fraud provision of the Kansas Securities Act, and if such disclosure is not made, the act of selling the securities is unlawful under the Act. K.S.A. 17-1253(a)(2).—State v. Stuber, 962 P.2d 1104, 25 Kan.App.2d 254, review denied.—Sec Reg 323.

Kan.App. 1998. "Material fact," referred to in Kansas Securities Act criminal securities fraud provision making it an unlawful act to make an untrue statement of a material fact or omit a material fact in connection with the purchase or sale of any security, may relate to the condition of a company and/or to the persons selling the company's securities. K.S.A. 17-1253(a)(2).—State v. Stuber, 962 P.2d 1104, 25 Kan.App.2d 254, review denied.—Sec Reg 323.

Ky.App. 1997. "Material fact," for purposes of fraudulent concealment, is fact which is likely to affect conduct of reasonable person and be inducement of contract.—Faulkner Drilling Co., Inc. v. Gross, 943 S.W.2d 634.—Fraud 18.

La. 1995. "Material fact," for summary judgment purposes, is one whose existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery, in other words, one that would matter on trial of the merits. LSA-C.C.P. art. 966, subd. B.—Whitney Nat. Bank v. Rockwell, 661 So.2d 1325, 1994-3049 (La. 10/16/95).—Judgm 181(2).

La. 1994. For purposes of summary judgment, "material fact" is one that's existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery; "material fact" is one that would matter on trial on merits.—Smith v. Our Lady of the Lake Hosp., Inc., 639 So.2d 730, 1993-2512 (La. 7/5/94), rehearing denied, appeal after remand 680 So.2d 1163, 1996-1837 (La. 9/27/96), rehearing denied 683 So.2d 258, 1996-1837 (La. 11/8/96).—Judgm 181(2).

La.App. 1 Cir. 2002. A fact is a "material fact" for purposes of summary judgment when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery.—Mobil Exploration & Producing U.S. Inc. v. Certain Underwriters Subscribing to Cover Note 95-3317(A), 837 So.2d 11, 2001-2219 (La.App. 1 Cir. 11/20/02), rehearing denied, writ denied 841 So.2d 805, 2003-0418 (La. 4/21/03).—Judgm 181(2).

La.App. 1 Cir. 2002. For summary judgment purposes, a "material fact" is one that would matter on the trial on the merits.—Mobil Exploration & Producing U.S. Inc. v. Certain Underwriters Subscribing to Cover Note 95-3317(A), 837 So.2d 11, 2001-2219 (La.App. 1 Cir. 11/20/02), rehearing denied, writ denied 841 So.2d 805, 2003-0418 (La. 4/21/03).—Judgm 181(2).

La.App. 1 Cir. 1996. "Material fact," genuine issue as to which will preclude summary judgment, is one whose existence is essential to plaintiff's cause of action under applicable theory of recovery and without which plaintiff could not prevail, and which potentially insures or precludes recovery, affects litigant's ultimate success, or determines outcome of legal dispute. LSA-C.C.P. art. 966.—Taylor v. Stewart, 672 So.2d 302, 951743 (La.App. 1 Cir. 4/4/96).—Judgm 181(2).

La.App. 1 Cir. 1995. Fact is "material fact," so that genuine issue as to dispute will preclude grant of summary judgment, if it is fact essential to

plaintiff's cause of action under applicable theory of recovery and without proof of which plaintiff could not prevail. LSA-C.C.P. art. 966.—*Monaghan v. Caserta*, 666 So.2d 397, 1995-0718 (La.App. 1 Cir. 12/15/95).—Judgm 181(2).

La.App. 1 Cir. 1995. "Material fact," genuine issue as to which will preclude summary judgment is fact which potentially insures or precludes recovery, affects litigant's ultimate success, or determines outcome of legal dispute. LSA-C.C.P. art. 966.—*Monaghan v. Caserta*, 666 So.2d 397, 1995-0718 (La.App. 1 Cir. 12/15/95).—Judgm 181(2).

La.App. 2 Cir. 1996. For purposes of summary judgment, fact is "material fact" if its existence may be essential to plaintiff's cause of action under applicable theory of recovery; facts are material if they potentially ensure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute.—*NAB Natural Resources, L.L.C. v. Willamette Industries, Inc.*, 679 So.2d 477, 28,555 (La.App. 2 Cir. 8/21/96), rehearing denied.—Judgm 181(2).

La.App. 2 Cir. 1994. Fact is "material fact" if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery.—*Barnett v. Staats*, 631 So.2d 84, 25,357 (La.App. 2 Cir. 1/19/94).—Judgm 181(2).

La.App. 2 Cir. 1993. For summary judgment, fact is "material fact" if it potentially assures or precludes recovery, affects litigants' ultimate success or determines outcome of legal dispute.—*Washington v. Reed*, 624 So.2d 465.—Judgm 181(2).

La.App. 2 Cir. 1963. Dispute over whether goods sold under distributorship agreement providing that title to goods should pass to distributor at time of shipment to consignee at distributor's order had been purchased by distributor sued for price or by corporation which he had caused to be formed did not relate to "material fact" within summary judgment statute. LSA-C.C.P. art. 966.—*Gym Master Co. v. Pool*, 157 So.2d 738.—Judgm 181(29).

La.App. 3 Cir. 1998. The mover for summary judgment has the burden of affirmatively showing the absence of a genuine issue of material fact through the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any; a "genuine issue" is a triable issue, and a "material fact" is one whose existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery, i.e., one that would matter on a trial of the merits. LSA-C.C.P. art. 966.—*City of Caren-cro v. Faulk*, 715 So.2d 569, 1997-1401 (La.App. 3 Cir. 6/10/98).—Judgm 181(2), 185(2).

La.App. 3 Cir. 1996. "Material fact," which will preclude summary judgment if unresolved, is one that potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of a legal dispute. LSA-C.C.P. art. 966.—*Nelson v. Torian*, 676 So.2d 773, 1996-176 (La.App.

3 Cir. 6/26/96), writ denied 682 So.2d 761, 1996-1938 (La. 11/15/96).—Judgm 181(2).

La.App. 3 Cir. 1996. For purposes of summary judgment motion, a "material fact" is one that will matter on the trial of the merits.—*Lake Charles Harbor and Terminal Dist. v. Erwin Heirs, Inc.*, 673 So.2d 1351, 1996-28, 1995-1514 (La.App. 3 Cir. 5/8/96), rehearing denied, writ denied 681 So.2d 371, 1996-1841 (La. 10/25/96).—Judgm 181(2).

La.App. 3 Cir. 1996. "Material fact" for purposes of summary judgment motion is one that would matter at trial on the merits. LSA-C.C.P. art. 966, subd. B.—*Johnson v. Concordia Bank & Trust Co.*, 671 So.2d 1093, 1995-1187 (La.App. 3 Cir. 3/27/96).—Judgm 181(2).

La.App. 3 Cir. 1996. Summary judgment should be granted only if pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to "material fact" and mover is entitled to judgment as a matter of law; facts are material if they determine outcome of legal dispute, and determination of materiality of particular fact must be made in light of applicable substantive law. LSA-C.C.P. art. 966.—*Perkins v. Gregory Mfg. Co.*, 671 So.2d 1036, 1995-01396 (La.App. 3 Cir. 3/20/96), writ denied 673 So.2d 1039, 1996-0971 (La. 5/31/96).—Judgm 181(2), 185(6).

La.App. 3 Cir. 1996. On motion for summary judgment, "material fact" is one that will matter on trial of merits. LSA-C.C.P. art. 966.—*Leger v. Tyson Foods, Inc.*, 670 So.2d 397, 1995-1055 (La. App. 3 Cir. 1/31/96), writ denied 671 So.2d 920, 1996-0545 (La. 4/19/96).—Judgm 181(2).

La.App. 4 Cir. 2001. Where there is a genuine issue of material fact it is error to grant a motion for summary judgment; a "material fact" is one whose existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery, i.e., one that would matter on the trial of the merits.—*Harvey v. Francis*, 785 So.2d 893, 2000-1268 (La.App. 4 Cir. 3/21/01).—Judgm 181(2).

La.App. 4 Cir. 1996. For summary judgment purposes, "genuine issue" exists when it is essential to outcome of case, and "material fact" is one which would matter at trial on merits.—*Robinson v. Whitney National Bank*, 683 So.2d 847, 1996-0628 (La.App. 4 Cir. 10/23/96), writ denied 685 So.2d 120, 1996-2807 (La. 1/6/97), appeal after remand 709 So.2d 937, 1997-1778 (La.App. 4 Cir. 3/4/98), rehearing denied, writ denied 720 So.2d 688, 1998-1127 (La. 6/5/98).—Judgm 181(2).

La.App. 4 Cir. 1996. "Material fact" for purposes of summary judgment is one whose existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery, i.e., one that would matter on trial of merits; "genuine issue" is triable issue. LSA-C.C.P. art. 966.—*Moyles v. Cruz*, 682 So.2d 326, 1996-0307, 1996-0308 (La.App. 4 Cir. 10/16/96), rehearing denied, writ denied 688 So.2d 504, 1996-3066 (La. 2/7/97).—Judgm 181(2).

La.App. 4 Cir. 1992. In context of determining whether genuine issue of material fact exists for purposes of summary judgment, "material fact" is fact that is determinative of outcome of dispute. LSA-C.C.P. art. 966.—*Bolanos v. Madary*, 609 So.2d 972, writ denied 615 So.2d 339.—Judgm 181(2).

La.App. 5 Cir. 2000. A "material fact" precluding a summary judgment is one that would matter on the trial of the merits. LSA-C.C.P. art. 966.—*Brown v. Manhattan Life Ins. Co.*, 778 So.2d 45, 99-1328 (La.App. 5 Cir. 12/13/00), writ granted 787 So.2d 1004, reversed 791 So.2d 74, 2001-0147 (La. 6/29/01).—Judgm 181(2).

La.App. 5 Cir. 2000. A "material fact," for summary judgment purposes, is one that would matter on the trial of the merits.—*Mack v. CDI Contractors, Inc.*, 757 So.2d 93, 99-1014, 99-1097 (La.App. 5 Cir. 2/29/00).—Judgm 181(2).

La.App. 5 Cir. 1997. "Material fact," for summary judgment purposes, is one whose existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery. LSA-C.C.P. art. 966.—*Rowley v. Loupe*, 694 So.2d 1006, 96-918 (La.App. 5 Cir. 4/9/97).—Judgm 181(2).

La.App. 5 Cir. 1994. Fact is "material fact" and precludes summary judgment, if its existence or nonexistence may be essential to plaintiff's cause of action under applicable theory of recovery; fact is material if it potentially insures or precludes recovery, affects litigant's ultimate success, or determines outcome of legal dispute. LSA-C.C.P. art. 966.—*Hanks v. Shell Oil Co.*, 631 So.2d 1189, 93-737 (La.App. 5 Cir. 1/25/94), writ granted, set aside 635 So.2d 1118, 1994-0483 (La. 4/4/94).—Judgm 181(2).

Me. 2003. A fact is considered to be a "material fact" for summary judgment purposes if it could potentially affect the outcome of the case.—*American Protection Ins. Co. v. Acadia Ins. Co.*, 814 A.2d 989, 2003 ME 6.—Judgm 181(2).

Me. 2002. For purposes of summary judgment, a "material fact" is one having the potential to affect the outcome of the suit.—*Bay View Bank, N.A. v. The Highland Golf Mortgagees Realty Trust*, 814 A.2d 449, 2002 ME 178.—Judgm 181(2).

Me. 2001. A "material fact" precluding summary judgment is one having the potential to affect the outcome of the suit.—*MP Associates v. Liberty*, 771 A.2d 1040, 2001 ME 22.—Judgm 181(2).

Me. 2000. For summary judgment purposes, "material fact" is one having the potential to affect outcome of suit.—*Burdzel v. Sobus*, 750 A.2d 573, 2000 ME 84.—Judgm 181(2).

Me. 1999. When the party opposing summary judgment has demonstrated that there are material facts in dispute, summary judgment is not available, and a "material fact" is one that has the potential to affect the outcome of the suit. Rules Civ.Proc., Rule 7(d).—*Legassie v. Bangor Pub. Co.*, 741 A.2d 442, 1999 ME 180.—Judgm 181(2).

Md. 2003. A "material fact," in summary judgment context, is a fact the resolution of which will

somehow affect the outcome of the case. Md.Rule 2-501(e).—*Todd v. Mass Transit Admin.*, 816 A.2d 930, 373 Md. 149.—Judgm 181(2).

Md. 2001. A dispute regarding a "material fact," which precludes summary judgment, involves a fact the resolution of which will somehow affect the outcome of the case.—*Lippert v. Jung*, 783 A.2d 206, 366 Md. 221.—Judgm 181(2).

Md. 2001. A dispute as to facts relating to grounds upon which the decision is not rested is not a dispute with respect to a "material fact," and such dispute does not prevent the entry of summary judgment.—*Lippert v. Jung*, 783 A.2d 206, 366 Md. 221.—Judgm 181(2).

Md. 2001. "Material fact," for summary judgment purposes, is a fact the resolution of which will somehow affect outcome of case. Md.Rule 2-501(e).—*Grimes v. Kennedy Krieger Institute, Inc.*, 782 A.2d 807, 366 Md. 29, reconsideration denied.—Judgm 181(2).

Md. 2001. For summary judgment purposes, a "material fact" is a fact the resolution of which will somehow affect the outcome of the case.—*Mayor and City Council of Baltimore v. Ross*, 779 A.2d 380, 365 Md. 351.—Judgm 181(2).

Md. 2001. For summary judgment purposes, a "material fact" is a fact the resolution of which will somehow affect the outcome of the case. Md.Rule 2-501(e).—*Taylor v. NationsBank, N.A.*, 776 A.2d 645, 365 Md. 166.—Judgm 181(2).

Md. 2001. A "material fact" precluding summary judgment is a fact the resolution of which will somehow affect the outcome of the case.—*Pence v. Norwest Bank Minnesota, N.A.*, 768 A.2d 639, 363 Md. 267.—Judgm 181(2).

Md. 2001. "Material fact," for purposes of a summary judgment motion, is a fact the resolution of which will somehow affect the outcome of the case. Md.Rule 2-501(e).—*Jones v. Mid-Atlantic Funding Co.*, 766 A.2d 617, 362 Md. 661.—Judgm 181(2).

Md. 2001. Dispute as to facts relating to grounds upon which the decision is not rested is not a dispute with respect to a "material fact," and such dispute does not prevent the entry of summary judgment. Md.Rule 2-501(e).—*Jones v. Mid-Atlantic Funding Co.*, 766 A.2d 617, 362 Md. 661.—Judgm 181(2).

Md. 2000. "Material fact" which, if in dispute, would preclude grant of summary judgment is a fact the resolution of which will somehow affect outcome of case. Md.Rule 2-501(e).—*Williams v. Mayor & City Council of Baltimore*, 753 A.2d 41, 359 Md. 101.—Judgm 181(2).

Md. 2000. Dispute as to facts relating to grounds upon which decision is not rested is not a dispute with respect to a "material fact," and such dispute does not prevent entry of summary judgment. Md.Rule 2-501(e).—*Williams v. Mayor & City Council of Baltimore*, 753 A.2d 41, 359 Md. 101.—Judgm 181(2).

Md. 1996. "Material fact" for purposes of summary judgment is fact the resolution of which will somehow affect outcome of case. Md.Rule 2-501.—*Goodwich v. Sinai Hosp. of Baltimore, Inc.*, 680 A.2d 1067, 343 Md. 185.—Judgm 181(2).

Md. 1985. For purpose of determining whether summary judgment is appropriate, "material fact" is fact, the resolution of which will somehow affect the outcome of the case.—*King v. Bankerd*, 492 A.2d 608, 303 Md. 98.—Judgm 181(2).

Md.App. 2003. For summary judgment purposes, a "material fact" is one that would affect the outcome of the case.—*Prince George's County v. The Washington Post Co.*, 815 A.2d 859, 149 Md. App. 289.—Judgm 181(2).

Md.App. 2001. A "material fact" for summary judgment purposes is one that will somehow affect the outcome of the case. Md.Rule 2-501.—*Davis v. Magee*, 782 A.2d 351, 140 Md.App. 635, reconsideration denied, certiorari denied 790 A.2d 673, 367 Md. 722, certiorari denied 123 S.Ct. 81, 154 L.Ed.2d 18.—Judgm 181(2).

Md.App. 2001. "Material fact," as used in summary judgment standard of genuine issue of material fact, is one that would affect outcome of case. Md.Rule 2-501(e).—*Schmerling v. Injured Workers' Insurance Fund*, 776 A.2d 80, 139 Md.App. 470, certiorari granted 783 A.2d 221, 366 Md. 246, reversed and remanded 795 A.2d 715, 368 Md. 434.—Judgm 181(2).

Md.App. 2001. A "material fact," for purposes of the rule that a genuine issue of material fact precludes summary judgment, is one that will alter the outcome of the case, depending upon the factfinder's resolution of the dispute. Md.Rule 2-501(e).—*Danielewicz v. Arnold*, 769 A.2d 274, 137 Md.App. 601, certiorari denied 775 A.2d 1216, 365 Md. 65.—Judgm 181(2).

Md.App. 2000. A "material fact" defeating a summary judgment is one that will alter the outcome of the case, depending upon how the factfinder resolves the dispute. Md.Rule 2-501(e).—*Samuels v. Tschechtelin*, 763 A.2d 209, 135 Md. App. 483, reconsideration denied.—Judgm 181(2).

Md.App. 2000. To proceed to trial, party opposing summary judgment motion must first produce evidence of a disputed "material fact," which is one that will alter outcome of case, depending upon how factfinder resolves dispute. Md.Rule 2-501(e).—*Berringer v. Steele*, 758 A.2d 574, 133 Md.App. 442.—Judgm 181(2).

Md.App. 2000. To proceed to trial, party opposing summary judgment motion must first produce evidence of a disputed "material fact," which is one that will alter outcome of case, depending on how factfinder resolves the dispute. Md.Rule 2-501(e).—*Ragin v. Porter Hayden Co.*, 754 A.2d 503, 133 Md.App. 116, certiorari denied 760 A.2d 1107, 361 Md. 232.—Judgm 181(2).

Md.App. 2000. For summary judgment purposes, "material fact" is one that will somehow affect outcome of the case.—*Nerenberg v. RICA of*

Southern Maryland, 750 A.2d 655, 131 Md.App. 646, certiorari denied 757 A.2d 810, 360 Md. 275.—Judgm 181(2).

Md.App. 1999. For purposes of summary judgment motion, "material fact" is one that will alter outcome of case depending upon how factfinder resolves dispute over it. Md. Rule 2-501(e).—*Crews v. Hollenbach*, 730 A.2d 742, 126 Md.App. 609, certiorari granted 736 A.2d 1064, 356 Md. 16, affirmed 751 A.2d 481, 358 Md. 627.—Judgm 181(2).

Md.App. 1999. For purposes of summary judgment rule, "material fact" is one that will somehow affect outcome of case. Md.Rule 2-501.—*McGraw v. Loyola Ford, Inc.*, 723 A.2d 502, 124 Md.App. 560, certiorari denied 727 A.2d 382, 353 Md. 473.—Judgm 181(2).

Md.App. 1999. Dispute as to fact relating to grounds upon which decision is not rested is not dispute with respect to "material fact" and such dispute does not prevent entry of summary judgment.—*Tschechtelin v. Samuels*, 722 A.2d 414, 124 Md.App. 389, certiorari granted 727 A.2d 381, 353 Md. 472, reversed and remanded 727 A.2d 929, 353 Md. 508, appeal after remand 763 A.2d 209, 135 Md.App. 483, reconsideration denied.—Judgm 181(2).

Md.App. 1996. "Material fact," for purposes of summary judgment, is one that will somehow affect outcome of case.—*Commercial Union Ins. Co. v. Harleysville Mut. Ins. Co.*, 675 A.2d 1059, 110 Md.App. 45, certiorari denied 684 A.2d 453, 343 Md. 679.—Judgm 181(2).

Md.App. 1996. "Material fact" is fact resolution of which will somehow affect outcome of case.—*Barber v. Eastern Karting Co.*, 673 A.2d 744, 108 Md.App. 659, certiorari denied *Woodbridge Karters v. Barber*, 681 A.2d 69, 343 Md. 334.—Judgm 181(2).

Md.App. 1995. For purposes of summary judgment motion, "material fact" is one that will somehow affect outcome of case.—*Chambers v. Seghetti*, 668 A.2d 1006, 107 Md.App. 536, reconsideration denied.—Judgm 181(2).

Md.App. 1995. "Material fact" precluding summary judgment is fact the resolution of which will somehow affect outcome of case.—*Friedman & Fuller, P.C. v. Funkhouser*, 666 A.2d 1298, 107 Md.App. 91.—Judgm 181(2).

Md.App. 1993. Dispute as to fact relating to grounds upon which decision is not rested is not a dispute with respect to a "material fact" and such dispute does not prevent entry of summary judgment.—*Dudley v. Baltimore Gas & Elec. Co.*, 632 A.2d 492, 98 Md.App. 182.—Judgm 181(2).

Md.App. 1993. "Material fact" for summary judgment purposes is one the resolution of which will somehow affect outcome of case.—*Miller v. Fairchild Industries, Inc.*, 629 A.2d 1293, 97 Md. App. 324, certiorari denied 634 A.2d 46, 333 Md. 172.—Judgm 181(2).

Md.App. 1993. "Material fact" is one that will affect outcome of case; thus, dispute as to nonmaterial fact will not preclude trial court from granting summary judgment. Md.Rule 2-501(e).—*Baker, Watts & Co. v. Miles & Stockbridge*, 620 A.2d 356, 95 Md.App. 145.—Judgm 181(2).

Md.App. 1992. "Material fact," for purposes of determining whether factual dispute precludes summary judgment, is one that will somehow affect outcome of case; conversely, dispute as to fact upon which decision is not rested will not prevent entry of summary judgment.—*Hartford Ins. Co. v. Manor Inn of Bethesda, Inc.*, 617 A.2d 590, 94 Md.App. 225, certiorari granted 624 A.2d 954, 330 Md. 458, affirmed 642 A.2d 219, 335 Md. 135.—Judgm 181(2).

Md.App. 1991. A "material fact," for purposes of determining whether summary judgment is available due to absence of disputed material facts, is one that affects resolution of case. Md.Rule 2-501(a).—*Chesapeake Outdoor Enterprises, Inc. v. Mayor and City Council of Baltimore*, 597 A.2d 503, 89 Md.App. 54.—Judgm 181(2).

Mass. 1975. A "material fact" for purposes of rule authorizing voiding of insurance contract is a fact the knowledge or ignorance of which would naturally influence the judgment of the underwriter in making the contract at all or in estimating degree and character of the risk or fixing the rate of the premium.—*Employers' Liability Assur. Corp., Ltd. v. Vella*, 321 N.E.2d 910, 366 Mass. 651.—Insurance 2958.

Mass.App.Ct. 1997. "Material fact" in insurance application, misrepresentation as to which will enable insurer to avoid policy, is one which would naturally influence judgment of underwriter in making contract at all, or in estimating degree and character of risk, or in fixing rate of premium. M.G.L.A. c. 175, § 186.—*Hanover Ins. Co. v. Leeds*, 674 N.E.2d 1091, 42 Mass.App.Ct. 54.—Insurance 2958.

Mass.App.Ct. 1980. Fraud and concealment clause in fire policies required that there be concealment of "material fact or circumstance" in order to render policy void, and "material fact," for purposes of determining whether the policy had been rendered void, was one the knowledge or ignorance of which would naturally have influenced judgment of underwriter in making contract at all, or in estimating degree or character of risk, or in fixing rate of premium.—*In-Towne Restaurant Corp. v. Aetna Cas. and Sur. Co.*, 402 N.E.2d 1385, 9 Mass.App.Ct. 534.—Insurance 2988.

Mass.App.Ct. 1974. In action in which subcontractor sought declaratory relief against general contractor with respect to and payment for channel and angle closures installed under protest and in which general contractor impleaded owner, even if affidavit suggested an inconsistency as to order in which subcontractor and owner's architects depicted their opposing interpretations of contract documents on certain sepias not prepared until after dispute arose, inconsistency was not as to "material fact" for purposes of summary judgment, in that

rights of parties were to be determined by original contract documents. M.G.L.A. c. 231 § 59.—*Industrial Engineering & Metal Fabricators, Inc. v. Fontaine Bros.*, 319 N.E.2d 726, 2 Mass.App.Ct. 695.—Judgm 185.3(8).

Mich. 2000. "Material fact" is one that is in issue in the sense that it is within the range of litigated matters in controversy. MRE 401.—*People v. Sabin*, 614 N.W.2d 888, 463 Mich. 43, on remand 620 N.W.2d 19, 242 Mich.App. 656, appeal denied 626 N.W.2d 416, 463 Mich. 1010.—Crim Law 382.

Mich. 1998. Fact that is "of consequence" to the action is a "material fact," for purposes of determining admissibility of evidence. MRE 401, 402.—*People v. Crawford*, 582 N.W.2d 785, 458 Mich. 376.—Crim Law 382.

Mich.App. 1999. Omission which misleads consumer is one of "material fact," and thus may support claim under Michigan Consumer Protection Act (MCPA), if it is one that is important to the transaction or affects the consumer's decision to enter into the transaction. M.C.L.A. § 445.903(1)(s).—*Zine v. Chrysler Corp.*, 600 N.W.2d 384, 236 Mich.App. 261.—Cons Prot 4.

Mich.App. 1982. Under summary judgment rule, "material fact" is ultimate fact issue upon which jury's verdict must be based. GCR 1963, 117.2(3).—*Belmont v. Forest Hills Public Schools*, 319 N.W.2d 386, 114 Mich.App. 692, appeal held in abeyance 331 N.W.2d 730, appeal denied 368 N.W.2d 234, 422 Mich. 891.—Judgm 181(2).

Mich.App. 1981. Under summary judgment rule, "material fact" is ultimate fact issue upon which jury's verdict must be based. GCR 1963, 117.2(3).—*Szidik v. Podsiadlo*, 311 N.W.2d 386, 109 Mich.App. 446.—Judgm 181(2).

Mich.App. 1977. Because relevant enabling legislation was intended to dispense with individual determinations of septic tank seepage by empowering governmental agencies to enact ordinances requiring connection of any structures in which sanitary sewage originates to any available public sewage disposal system, fact that some septic tanks did not leak putrescent waste was not a "material fact" such as would preclude summary judgment in favor of charter township, in action to challenge township ordinance requiring plaintiffs, on pain of criminal penalties, to forego use of their septic tanks. M.C.L.A. § 123.281 et seq.; GCR 1963, 117.2(3).—*Renne v. Township of Waterford, Oakland County*, 252 N.W.2d 842, 73 Mich.App. 685.—Judgm 181(15.1).

Minn. 1974. For purposes of rule permitting trial court to grant summary judgment if it finds that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law, a "material fact" is one of such a nature as will affect the result or outcome of the case depending upon its resolution. M.S.A. § 334.01 et seq.; Rules Civ.Proc., Dist.Ct., rule 56.03, 27A M.S.A.—*Rathbun v. W. T. Grant Co.*, 219 N.W.2d 641, 300 Minn. 223.—Judgm 181(2).

Minn.App. 1994. Summary judgment is appropriate when there is no genuine issue as to any material fact and party is entitled to judgment as matter of law; "material fact" is one that will affect result or outcome of case depending on its resolution.—*Sphere Drake Ins. Co. v. Tremco, Inc.*, 513 N.W.2d 473, review denied.—Judgm 181(2).

Minn.App. 1993. "Material fact" is one which will affect result or outcome of case depending on its resolution.—*Musicland Group, Inc. v. Ceridian Corp.*, 508 N.W.2d 524, review denied.—Judgm 181(2).

Minn.App. 1984. "Material fact" as used in rule of civil procedure on summary judgment is one whose resolution will affect the results or outcome of the case. Rules Civ.Proc., Rule 56.03.—*Highland Chateau, Inc. v. Minnesota Dept. of Public Welfare*, 356 N.W.2d 804, review denied.—Judgm 181(2).

Miss.App. 2002. A fact which resolves any of the issues raised by the parties is a "material fact" for summary judgment purposes.—*Collums ex rel. Collums v. Union Planters Bank, N.A.*, 832 So.2d 572, rehearing denied, certiorari denied 832 So.2d 533.—Judgm 181(2).

Miss.App. 2001. For purposes of review of an order granting summary judgment, a "material fact" is a factual issue that matters in an outcome determinative sense.—*Sample v. Haga*, 824 So.2d 627, rehearing denied, certiorari denied 826 So.2d 1293.—Judgm 181(2).

Mo. 1994. A fact that invokes the jurisdiction of a court is a "material fact" for purposes of disciplinary rule proscribing false statement of material fact to tribunal. V.A.M.R. 4, Rules of Prof.Conduct, Rule 3.3(a).—*In re Oberhellmann*, 873 S.W.2d 851.—Atty & C 42.

Mo. 1992. "Material fact," within meaning of professional conduct rule providing that lawyer shall not knowingly make false statement of "material fact" or law to a tribunal or fail to disclose "material fact" to tribunal when disclosure is necessary to avoid assisting criminal or fraudulent act by client, is one of such probative force as would control or determine result in litigation. V.A.M.R. 4, Rules of Prof.Conduct, Rule 3.3.—*In re Ver Dught*, 825 S.W.2d 847.—Atty & C 42.

Mo. 1906. Under the rule that the jury may reject the whole or any part of a witness' testimony if they believe such witness has sworn falsely as to any material fact, by the term "material fact" is meant any fact which tends to prove or disprove the defendant's guilt or innocence.—*State v. McCarver*, 92 S.W. 684, 194 Mo. 717.

Mo.App. E.D. 1992. "Material fact" precluding summary judgment is one which has legal probative force as to a controlling issue.—*Feder v. Nation of Israel*, 830 S.W.2d 449, transfer denied, appeal after remand 872 S.W.2d 567, rehearing, transfer denied, and transfer denied.—Judgm 181(2).

Mo.App. E.D. 1990. Fact that is of such legal probative force as would control or determine out-

come of litigation constitutes "material fact" for summary judgment purposes. V.A.M.R. 74.04(c).—*Karney v. Wohl*, 785 S.W.2d 630.—Judgm 181(2).

Mo.App. E.D. 1985. A "material fact" which would preclude granting of summary judgment is one of such probative force as would control or determine results of litigation.—*Olson v. Auto Owners Ins. Co.*, 700 S.W.2d 882.—Judgm 181(2).

Mo.App. E.D. 1980. Issue of fact, for purpose of avoiding summary judgment exists whenever there is slightest doubt as to material facts; a "material fact" is one of such probative force as would control or determine result in litigation.—*State ex rel. McDonnell Douglas Corp. v. Gaertner*, 601 S.W.2d 295.—Judgm 181(2), 181(4).

Mo.App. E.D. 1980. For purpose of summary judgment, a "genuine issue of fact" exists whenever there is the slightest doubt as to a material fact and a "material fact" is one which has less probative force relevant to the controlling issue. V.A.M.R. Civil Rule 74.04(c).—*Kaufman v. Bormaster*, 599 S.W.2d 35.—Judgm 181(2), 181(4).

Mo.App. S.D. 1992. For purposes of summary judgment, "material fact" is one that is of such legal probative force as to control or determine outcome of litigation; slightest doubt about such fact gives rise to genuine issue of material fact. V.A.M.R. 74.04(c).—*Berneathy v. Pursley*, 832 S.W.2d 524.—Judgm 181(2), 181(4).

Mo.App. W.D. 1993. "Material fact" sufficient to oppose motion for summary judgment is one having such probative value that it would control or determine litigation.—*Auto-Owners Mut. Ins. Co., Inc. v. Newman*, 851 S.W.2d 22, rehearing, transfer denied.—Judgm 181(2).

Mo.App. W.D. 1992. Real estate broker's failure to inform sellers that she had signed their name on form used to build up credit in her sales record to gain membership in sales club could not have constituted "material fact" omission of which could be grounds for discipline of real estate license; sellers had already signed contract to sell their house, and there was nothing about form which could have affected their judgment in entering into contract. V.A.M.S. § 339.100, subd. 2(2).—*Pilgram v. Missouri Real Estate Com'n*, 835 S.W.2d 545.—Brok 3.

Mo.App. 1977. Not every factual dispute will bar summary judgment; dispute must involve a "material fact," that is, one which has legal probative force as to a controlling issue. V.A.M.R. Civil Rule 74.04(c).—*Seliga Shoe Stores, Inc. v. City of Maplewood*, 558 S.W.2d 328.—Judgm 181(2).

N.J. 1995. An omission of any "material fact," for purposes of Consumer Fraud Act as applied to real estate transactions, is not confined to conditions on premises. N.J.S.A. 56:8-2.—*Strawn v. Canuso*, 657 A.2d 420, 140 N.J. 43.—Cons Prot 8.

N.Y. 1996. Reinsured's insolvency was "material fact" that reinsured's duty of utmost good faith required it to disclose to treaty reinsurers; insol-

veny had potential on reinsurers' risk sufficient to trigger uberrimae fidei obligation for disclosure.—*Matter of Liquidation of Union Indem. Ins. Co. of New York*, 651 N.Y.S.2d 383, 89 N.Y.2d 94, 674 N.E.2d 313.—*Insurance* 3608(2).

N.Y. 1916. Where a tenant disclosed to the insurer's agent that he and the landlord had a contract by which title to certain hay remained in the landlord until performance by the tenant of his lease covenants, and the insurer issued its policy in favor of the tenant, but on loss its adjuster represented to the tenant that the policy was void as to the hay, when in fact, it was valid, and the tenant relied on such representation and settled for less than the loss, the representation was of a "material fact," so as to entitle the tenant to rescind the contract of settlement and sue for the entire loss.—*Hudson v. Glens Falls Ins. Co.*, 112 N.E. 728, 218 N.Y. 133.

N.Y.A.D. 1 Dept. 1935. Statement in application for life insurance that applicant had no other life insurance held misrepresentation of a "material fact."—*Prudential Ins. Co. of America v. Drucker*, 278 N.Y.S. 191, 244 A.D. 41.—*Insurance* 3025.

N.Y.A.D. 1 Dept. 1935. It was incumbent on applicant for life insurance to disclose whether he had applied for other life insurance, since application for other life insurance was a "material fact."—*Prudential Ins. Co. of America v. Drucker*, 278 N.Y.S. 191, 244 A.D. 41.—*Insurance* 3024.

N.Y.Sup. 1958. Existence of liens of assessments against premises was a "material fact" within provision of title policy that any failure to disclose any material facts should void policy, and if assignor of policy had knowledge thereof, there was a failure of disclosure within policy.—*Glickman v. Home Title Guaranty Co.*, 178 N.Y.S.2d 281, 15 Misc.2d 167, affirmed 185 N.Y.S.2d 756, 8 A.D.2d 629, appeal denied 190 N.Y.S.2d 333, 8 A.D.2d 827, appeal denied 193 N.Y.S.2d 453, 7 N.Y.2d 717, 162 N.E.2d 635, appeal dismissed 193 N.Y.S.2d 1025, 7 N.Y.2d 705, 162 N.E.2d 752.—*Insurance* 2986.

N.Y.Sup. 1932. In perjury prosecution, court must determine, as matter of law, whether false swearing relates to "material fact," which means fact that might influence jury in decision.—*People v. Kresel*, 264 N.Y.S. 464, 147 Misc. 241.—*Perj* 36.

N.C. 2001. Robbery victim's statement describing the assailants and the details of the crime was offered as evidence of a "material fact," as element for admissibility under hearsay exception for admission of statements by an unavailable declarant if the statements have sufficient circumstantial guarantees of trustworthiness, at guilt phase of prosecution of defendant for capital murder of another victim. *Rules of Evid.*, Rule 804(b)(5), G.S. § 8C-1.—*State v. Fowler*, 548 S.E.2d 684, 353 N.C. 599, certiorari denied 122 S.Ct. 1322, 535 U.S. 939, 152 L.Ed.2d 230.—*Crim Law* 419(5).

N.C. 1981. For purposes of summary judgment, a "genuine issue" is one which may be maintained by substantial evidence, while a "material fact" is one which would constitute or would irrevocably

establish any material element of a claim or a defense. *Rules Civ.Proc.*, Rule 56(c), G.S. § 1A-1.—*Bone Intern., Inc. v. Brooks*, 283 S.E.2d 518, 304 N.C. 371.—*Judgm* 181(2).

N.C. 1968. A "material fact" for purpose of determining whether controversy must be submitted to jury is one which constitutes part of plaintiff's cause of action or of the defendant's defense. G.S. §§ 1-196, 1-198.—*Johnson v. Lamb*, 161 S.E.2d 131, 273 N.C. 701.—*Trial* 350.1.

N.C. 1952. Within rule that party is entitled to jury trial when issue of material fact arises on the pleadings, a "material fact" is one which constitutes a part of plaintiff's cause of action or defendant's defense. G.S. §§ 1-172, 1-196.—*Wells v. Clayton*, 72 S.E.2d 16, 236 N.C. 102.—*Trial* 136(1).

N.C. 1942. If a promise is made "fraudulently", that is, with no intention to carry it out, thus being a misrepresentation of the state of the promisor's mind which is a "material fact," and with intention that it shall be acted upon, and it is acted upon to promisee's injury, the promise will sustain an action based on fraud and the promisee will be entitled to relief.—*Williams v. Williams*, 18 S.E.2d 364, 220 N.C. 806.—*Fraud* 12.

N.C. 1939. A representation of fact may be false or untrue through mistake, ignorance, accident or negligence, in which case, if it induces the risk which insurer would not otherwise have taken, it is a "material fact," misrepresentation of which avoids the policy even though insured be innocent of intent to deceive.—*Equitable Life Assur. Soc. of U. S. v. Ashby*, 1 S.E.2d 830, 215 N.C. 280.—*Insurance* 2959.

N.C.App. 1995. "Material fact," for purposes of summary judgment, is that which would constitute legal defense preventing nonmoving party from prevailing. *Rules Civ.Proc.*, Rule 56(c), G.S. § 1A-1.—*Board of Educ. of Hickory Administrative School Unit v. Seagle*, 463 S.E.2d 277, 120 N.C.App. 566, review allowed 467 S.E.2d 706, 342 N.C. 652, review improvidently allowed 471 S.E.2d 63, 343 N.C. 509.—*Judgm* 181(2), 181(6).

N.C.App. 1990. "Material fact" for purposes of summary judgment rule is fact which may constitute legal defense or may affect result of action or whose resolution is essential to party against whom it is resolved. *Rules Civ.Proc.*, Rule 56(c), G.S. § 1A-1.—*Matter of Greenleaf Corp.*, 393 S.E.2d 563, 99 N.C.App. 489, review denied 402 S.E.2d 834, 328 N.C. 330.—*Judgm* 181(2).

N.C.App. 1985. A "material fact" for summary judgment purposes is one that would constitute or would irrevocably establish any material element of a claim or defense.—*Warren v. Rosso and Mastracco, Inc.*, 336 S.E.2d 699, 78 N.C.App. 163.—*Judgm* 181(2).

N.C.App. 1984. A "material fact" for purposes of a summary judgment motion is one which would constitute or irrevocably establish any material element of a claim or defense. *Rules Civ.Proc.*, Rule 56(c), G.S. § 1A-1.—*Gebb v. Gebb*, 312 S.E.2d 691, 67 N.C.App. 104.—*Judgm* 181(2).

N.C.App. 1969. A “material fact” is one which constitutes a part of plaintiff’s cause of action or defendant’s defense. G.S. § 1–196.—Whitley v. Redden, 169 S.E.2d 260, 5 N.C.App. 705, modified 171 S.E.2d 894, 276 N.C. 263.—Trial 136(1).

Ohio App. 1 Dist. 1999. For purposes of deciding a summary judgment motion, a “material fact” is one that might affect the outcome of the suit under the governing law, and a “genuine issue” exists when the evidence presents a sufficient disagreement to require submission to the jury. Rules Civ.Proc., Rule 56(C, E).—Mayo v. Kenwood Country Club, Inc., 731 N.E.2d 190, 134 Ohio App.3d 336, appeal not allowed 715 N.E.2d 569, 86 Ohio St.3d 1467.—Judgm 181(2).

Ohio App. 6 Dist. 1999. A “material fact,” for purposes of summary judgment motion, is one that would affect the outcome of the suit under the applicable substantive law. Rules Civ.Proc., Rule 56.—Russell v. Interim Personnel, Inc., 733 N.E.2d 1186, 135 Ohio App.3d 301.—Judgm 181(2).

Ohio App. 6 Dist. 1999. A “material fact,” a genuine issue that will preclude summary judgment, is one that would affect the outcome of the suit under the applicable substantive law. Rules Civ. Proc., Rule 56.—Koralewski v. J-Ard Corp., 726 N.E.2d 1025, 133 Ohio App.3d 18.—Judgm 181(2).

Ohio App. 6 Dist. 1998. “Material fact,” in summary judgment context, is one which would affect the outcome of the suit under the applicable substantive law. Rules Civ.Proc., Rule 56(C).—Estate of Minser v. Poinette, 717 N.E.2d 1145, 129 Ohio App.3d 398, appeal not allowed 704 N.E.2d 258, 84 Ohio St.3d 1461.—Judgm 181(2).

Ohio App. 6 Dist. 1995. Basic to grant of summary judgment motion is that there be no genuine issue as to a “material fact”; material facts are determined by substantive law, and only disputes over facts that might affect outcome of suit under governing law will properly preclude summary judgment; irrelevant and unnecessary factual disputes will not preclude summary judgment.—Wall v. Firelands Radiology, Inc., 666 N.E.2d 235, 106 Ohio App.3d 313, appeal not allowed 659 N.E.2d 1289, 74 Ohio St.3d 1512.—Judgm 181(2).

Ohio App. 8 Dist. 1995. Key to summary judgment is that there must be no genuine issue as to any material fact; “material fact” depends on substantive law of claim being litigated. Rules Civ. Proc., Rule 56(C).—Hoyt, Inc. v. Gordon & Assoc., Inc., 662 N.E.2d 1088, 104 Ohio App.3d 598.—Judgm 181(2).

Ohio Com.Pl. 2001. For purposes of ruling on a motion for summary judgment, a dispute of fact is a “material fact” if it affects the outcome of the litigation. Rules Civ.Proc., Rule 56(C) (1999).—Johnston v. Johnston, 774 N.E.2d 1249, 119 Ohio Misc.2d 143, 2001-Ohio-4387.—Judgm 181(2).

Okla. 1994. On motion for summary judgment, a fact is a “material fact” if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action. District Courts Rule 13, 12 O.S.A. Ch. 2, App.—Buck’s Sporting

Goods, Inc. of Tulsa v. First Nat. Bank & Trust Co. of Tulsa, 868 P.2d 693, 1994 OK 14.—Judgm 181(2).

Or. 2000. “Material fact,” within meaning of disciplinary rule prohibiting attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation related to a material, consists of information that, if disclosed, would have influenced the recipient’s conduct. Code of Prof.Resp., DR 1–102(A)(3).—In re Conduct of Gatti, 8 P.3d 966, 330 Or. 517.—Atty & C 37.1.

Or.App. 2000. A “material fact” for purposes of summary judgment is one that, under applicable law, might affect the outcome of a case.—Zygar v. Johnson, 10 P.3d 326, 169 Or.App. 638, review denied 19 P.3d 356, 331 Or. 584.—Judgm 181(2).

Pa.Super. 2002. A “material fact,” on a motion for summary judgment, is one that directly affects the outcome of the case.—Fortney v. Callenberger, 801 A.2d 594.—Judgm 181(2).

Pa.Super. 2000. For summary judgment purposes, “material fact” is one that directly affects the outcome of the case.—Kuney v. Benjamin Franklin Clinic, 751 A.2d 662.—Judgm 181(2).

Pa.Cmwlt. 1998. For purposes of summary judgment motion, “material fact” is one that directly affects the outcome of the case. Rules Civ.Proc., Rule 1035(b) (Repealed), 42 Pa.C.S.A.—Com., Dept. of Environmental Protection v. Delta Chemicals, Inc., 721 A.2d 411.—Judgm 181(2).

Tenn.Ct.App. 1995. “Material fact,” which precludes summary judgment, is fact that must be decided in order to resolve substantive claim or defense at which motion is directed. Rules Civ. Proc., Rule 56.03.—Suddath v. Parks, 914 S.W.2d 910, rehearing denied, and appeal denied.—Judgm 181(2).

Tenn.Ct.App. 1989. A “material fact,” for purposes of denying summary judgment if a dispute exists as to such fact, is a fact that is essential to the resolution to the legal questions that will ultimately decide the case. Rules Civ.Proc., Rule 56.03.—Rollins v. Winn Dixie, 780 S.W.2d 765.—Judgm 181(2).

Tex.Crim.App. 1991. Omitted fact in connection with sale or offer of securities is “material fact,” so that its omission constitutes fraud, if there is substantial likelihood that it would have assumed actual significance in deliberations of reasonable investor and that it would have been viewed by reasonable investor as significantly altering total mix of available information used in deciding whether to invest. Vernon’s Ann.Texas Civ.St. arts. 581–4, subd. F, 581–29, subd. C(1).—Bridwell v. State, 804 S.W.2d 900.—Sec Reg 278.

Tex.App.—Texarkana 2002. A fact is a “material fact” for summary judgment purposes only if it affects the outcome of the suit under the governing law.—West Trinity Properties, Ltd. v. Chase Manhattan Mortg. Corp., 92 S.W.3d 866.—Judgm 181(2).

Tex.Civ.App.—Dallas 1966. To constitute actionable “fraud” the representation complained of must concern a material fact as distinguished from a mere matter of opinion, judgment, probability or expectation and if representation is vague or is merely a loose, conjectural or exaggerated statement, it is not a “material fact”.—*Peterson v. Barron*, 401 S.W.2d 680.—*Fraud* 11(1).

Tex.Civ.App.—Waco 1924. Under Rev.St. arts. 4741, 4953, 4959 (repealed). See V.A.T.S. Insurance Code, arts. 3.44, 21.18, 21.24), insurance companies have burden of proving not only that representations of insured are false, but of establishing materiality thereof; misrepresentation being statement by assured of something as fact which is untrue and has tendency to mislead; “material fact” being one which would induce company to decline insurance altogether, or not to accept it except at higher premium.—*Missouri State Life Ins. Co. v. Dossett*, 265 S.W. 254, writ granted, reversed 277 S.W. 620, rehearing denied 284 S.W. 949.—*Insurance* 2957, 2958, 2979.

Tex.Civ.App.—Eastland 1937. Counsel’s statement in argument of material fact, to support which there was no evidence, constitutes breach of rules of argument, but term “material fact” does not include facts of common knowledge of which courts take cognizance without proof, or facts inferable by process of reasoning from other facts supported by evidence as to which some allowance must be made for difference of opinion as to what facts may be inferred from others.—*Traders & General Ins. Co. v. Hill*, 104 S.W.2d 603, writ dismissed.—*Trial* 121(2).

Tex.Civ.App.—Corpus Christi 1979. In order for a fact to be “material fact” for purpose of rules relating to cancellations for fraud, there must be proof that the fact induced the complaining party to enter into the contract.—*Sawyer v. Pierce*, 580 S.W.2d 117, ref. n.r.e.—*Contracts* 94(2).

Utah 1974. A “material fact” within meaning of Uniform Securities Act provision rendering liable any person who offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact means something which a buyer or seller of ordinary intelligence and prudence would think to be of some importance in determining whether to buy or sell. U.C.A.1953, 61–1–22(1)(b).—*S & F Supply Co. v. Hunter*, 527 P.2d 217.—*Sec Reg* 278.

Utah 1943. A “material fact”, within insurance law, is any fact, knowledge or ignorance of which would naturally influence insurer’s judgment in making the contract, in estimating degree and character of risk, or in fixing rate of premium.—*Fidelity & Casualty Co. of New York v. Middlemiss*, 135 P.2d 275, 103 Utah 429.—*Insurance* 2958.

Wash. 2002. A genuine issue of “material fact,” which precludes summary judgment, is a fact upon which the outcome of the litigation depends in whole or in part. CR 56.—*Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 59 P.3d 655, 148 Wash.2d 224.—*Judgm* 181(2).

Wash. 2002. Alleged misrepresentation to child support obligee, by obligor’s attorney, that county prosecutors were unavailable to counsel her regarding settlement of claim for interest on judgment for past-due child support did not involve a “material fact,” within meaning of rules of professional conduct prohibiting an attorney from knowingly making a false statement of material fact or law to a third person or from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; obligee was under no immediate pressure during her conversation with attorney to consult with prosecutors and she made no effort to do so, and attorney merely relayed his understanding of prosecutors’ schedules and did not attempt to deter obligee from contacting the prosecutors. RPC 4.1(a), 8.4(c).—*In re Disciplinary Proceeding Against Carmick*, 48 P.3d 311, 146 Wash.2d 582, as am on denial of reconsideration.—*Atty & C* 37.1.

Wash. 2002. A “material fact,” for summary judgment purposes, is one upon which the outcome of the litigation depends. CR 56(c).—*International Ass’n of Firefighters, Local 1789 v. Spokane Airports*, 45 P.3d 186, 146 Wash.2d 207, amended on denial of reconsideration 50 P.3d 618.—*Judgm* 181(2).

Wash. 1997. “Material fact” precluding summary judgment is one of such nature that it affects outcome of litigation. CR 56(c).—*Greater Harbor 2000 v. City of Seattle*, 937 P.2d 1082, 132 Wash.2d 267.—*Judgm* 181(2).

Wash. 1995. “Material fact,” issue as to which will preclude summary judgment, is fact of nature that it affects outcome of litigation. CR 56(c).—*Ruff v. County of King*, 887 P.2d 886, 125 Wash.2d 697.—*Judgm* 181(2).

Wash. 1993. “Material fact,” precluding grant of summary judgment, is one upon which outcome of litigation depends.—*Clements v. Travelers Indem. Co.*, 850 P.2d 1298, 121 Wash.2d 243.—*Judgm* 181(2).

Wash. 1990. “Material fact,” for summary judgment purposes, is one upon which outcome of litigation depends in whole or in part. CR 56(c).—*Atherton Condominium Apartment-Owners Ass’n Bd. of Directors v. Blume Development Co.*, 799 P.2d 250, 115 Wash.2d 506, reconsideration denied.—*Judgm* 181(2).

Wash. 1986. For purposes of the Franchise Investment Protection Act, a “material fact” is a fact to which a reasonable man would attach importance in determining his choice of action in the transaction in question. West’s RCWA 19.100.170(2).—*Morris v. International Yogurt Co.*, 729 P.2d 33, 107 Wash.2d 314.—*Trade Reg* 871(1).

Wash. 1979. A “material fact” for purposes of motion for summary judgment is one on which litigation’s outcome depends. CR 56(c).—*Ohler v. Tacoma General Hospital*, 598 P.2d 1358, 92 Wash.2d 507.—*Judgm* 181(2).

Wash. 1977. A “material fact,” for summary judgment purposes, is one upon which outcome of

litigation depends. CR 56.—*Jacobsen v. State*, 569 P.2d 1152, 89 Wash.2d 104.—Judgm 181(2).

Wash. 1974. For purposes of summary judgment, a “material fact” is a fact upon which the outcome of the litigation depends, in whole or in part. CR 56(c).—*Morris v. McNicol*, 519 P.2d 7, 83 Wash.2d 491.—Judgm 181(2).

Wash. 1972. For purposes of summary judgment a “material fact” is a fact upon which the outcome of the litigation depends, in whole or in part. CR 56.—*Barber v. Bankers Life & Cas. Co.*, 500 P.2d 88, 81 Wash.2d 140.—Judgm 181(2).

Wash. 1963. A “material fact” within rule that summary judgment shall be granted only if pleadings, affidavits, depositions or admissions on file show there is no genuine issue as to any material fact is one upon which outcome of litigation depends. Rules of Pleading, Practice and Procedure, rule 56.—*Balise v. Underwood*, 381 P.2d 966, 62 Wash.2d 195.—Judgm 181(2).

Wash. 1963. Whether note payable to partnership executed as part of maker's contribution to partnership capital account and account allegedly owed by maker to partnership were shown as assets of partnership at time maker's interest in partnership was purchased by co-partner and whether buyer intended to acquire note and debts enforceable against seller were not such issues of “material fact” as would preclude summary judgment for seller in action by buyer to recover balance allegedly owing on note and account. Rules of Pleading, Practice and Procedure, rule 56.—*Zedrick v. Kosenski*, 380 P.2d 870, 62 Wash.2d 50.—Judgm 181(26).

Wash. 1924. In an action for injuries from an automobile collision, an instruction that contributory negligence to preclude recovery must have “materially contributed to the accident,” though not commendable, held not prejudicial error; “material” meaning important, more than less necessary, having influence or effect, etc., and a “material fact” being one essential to the claim or defense without which it could not be supported.—*Hansen v. Sandvik*, 222 P. 205, 128 Wash. 60.—App & E 1064.4.

Wash.App. Div. 1 2002. A “material fact,” in summary judgment context, is one upon which the outcome of the litigation depends. CR 56(c).—*Cotton v. Kronenberg*, 44 P.3d 878, 111 Wash.App. 258, reconsideration denied, review denied 62 P.3d 890, 148 Wash.2d 1011.—Judgm 181(2).

Wash.App. Div. 1 1984. “Material fact” for summary judgment purposes is one on which outcome of litigation depends.—*Brill v. Swanson*, 674 P.2d 211, 36 Wash.App. 396, review denied 101 Wash.2d 1014.—Judgm 181(2).

Wash.App. Div. 1 1980. A “material fact” within purview of Securities Act provision rendering it unlawful for any person in connection with offer, sale or purchase of any security, directly or indirectly, to make any untrue statement of material fact is one which a reasonable person would attach importance to in determining his or her choice of action

in the transaction. West's RCWA 21.20.005 et seq., 21.20.010.—*Golberg v. Sanglier*, 616 P.2d 1239, 27 Wash.App. 179, review granted 95 Wash.2d 1003, reversed 639 P.2d 1347, 96 Wash.2d 874, opinion amended 647 P.2d 489, 96 Wash.2d 874.—Sec Reg 278.

Wash.App. Div. 1 1980. “Material fact” which will preclude summary judgment is one upon which outcome of litigation depends, in whole or in part.—*Runkle v. Bank of California*, 614 P.2d 226, 26 Wash.App. 769, review denied 94 Wash.2d 1018.—Judgm 181(2).

Wash.App. Div. 1 1980. “Material fact” within summary judgment rule is fact on which, in whole or in part, outcome of litigation depends. CR 56(c).—*Downtown Traffic Planning Committee v. Royer*, 612 P.2d 430, 26 Wash.App. 156.—Judgm 181(2).

Wash.App. Div. 1 1977. For purposes of the summary judgment rule, a “material fact” is one upon which the outcome of the litigation depends in whole or in part. CR 56.—*Peterick v. State*, 589 P.2d 250, 22 Wash.App. 163.—Judgm 181(2).

Wash.App. Div. 1 1977. A “material fact” which will preclude summary judgment is one upon which the outcome of litigation depends in whole or in part. CR 56.—*Island Air, Inc. v. LaBar*, 566 P.2d 972, 18 Wash.App. 129.—Judgm 181(2).

Wash.App. Div. 1 1972. “Material fact” concerning which trial court is required to make findings in divorce proceedings, is one which reasonable man would attach importance to in determining his course of action, and it is one upon which outcome of litigation depends. CR 52.—*Wold v. Wold*, 503 P.2d 118, 7 Wash.App. 872.—Divorce 150.

Wash.App. Div. 2 2000. A “material fact,” for summary judgment purposes, is one that affects the outcome of the litigation. CR 56(c).—*Lewis v. Krussel*, 2 P.3d 486, 101 Wash.App. 178, review denied 11 P.3d 826, 142 Wash.2d 1023.—Judgm 181(2).

Wash.App. Div. 2 2000. A “material fact” for the purposes of summary judgment is one upon which the outcome of the litigation depends.—*Smith v. State Employment Sec. Dept.*, 997 P.2d 1013, 100 Wash.App. 561.—Judgm 181(2).

Wash.App. Div. 2 1993. For summary judgment purposes, “material fact” is one upon which outcome of litigation depends. CR 56(c).—*Ottis Holwegner Trucking v. Moser*, 863 P.2d 609, 72 Wash.App. 114.—Judgm 181(2).

Wash.App. Div. 2 1993. “Material fact” for summary judgment purposes is fact upon which outcome of action depends.—*Ames v. City of Fircrest*, 857 P.2d 1083, 71 Wash.App. 284.—Judgm 181(2).

Wash.App. Div. 2 1985. For purposes of summary judgment, a “material fact” is a fact upon which the outcome of litigation depends, in whole or in part. CR 56.—*Spurrell v. Bloch*, 701 P.2d 529, 40 Wash.App. 854, review denied 104 Wash.2d 1014.—Judgm 181(2).

Wash.App. Div. 2 1982. “Material fact” for purposes of summary judgment is one which controls the outcome of the litigation. CR 56(c).—*Simons v. Tri-State Const. Co.*, 655 P.2d 703, 33 Wash.App. 315, review denied 99 Wash.2d 1001.—Judgm 181(2).

Wash.App. Div. 2 1982. “Material fact” for purposes of summary judgment is one upon which outcome of litigation depends.—*Geppert v. State*, 639 P.2d 791, 31 Wash.App. 33.—Judgm 181(2).

Wash.App. Div. 3 2002. A “material fact” for summary judgment purposes is one upon which all or part of the outcome of the litigation depends. CR 56.—*Hill v. Cox*, 41 P.3d 495, 110 Wash.App. 394, review denied 60 P.3d 92, 147 Wash.2d 1024.—Judgm 181(2).

Wash.App. Div. 3 2001. A “material fact,” for purposes of a summary judgment motion, is a fact upon which the outcome of the litigation depends, in whole or in part. CR 56(c).—*Stelter v. Department of Labor and Industries*, 27 P.3d 650, 107 Wash.App. 477, review granted 41 P.3d 483, 145 Wash.2d 1020, reversed 57 P.3d 248, 147 Wash.2d 702.—Judgm 181(2).

Wash.App. Div. 3 2000. A “material fact,” for purposes of summary judgment motion, is one upon which the outcome of the litigation depends.—*Graham v. Concord Construction, Inc.*, 999 P.2d 1264, 100 Wash.App. 851.—Judgm 181(2).

Wash.App. Div. 3 1999. For purposes of summary judgment motion, a “material fact” is one upon which the outcome of the litigation depends in whole or in part. CR 56.—*Samis Land Co. v. City of Soap Lake*, 980 P.2d 805, 96 Wash.App. 819, as amended, affirmed and remanded 23 P.3d 477, 143 Wash.2d 798.—Judgm 181(2).

Wash.App. Div. 3 1999. “Material fact,” for purposes of summary judgment motion, is one to which a reasonable person would attach importance in determining a course of action.—*Hudson v. City of Wenatchee*, 974 P.2d 342, 94 Wash.App. 990.—Judgm 181(2).

Wash.App. Div. 3 1999. “Material fact,” for purposes of summary judgment motion, is one that is important and is essential to the conclusions upon which the outcome of the litigation depends.—*Hudson v. City of Wenatchee*, 974 P.2d 342, 94 Wash.App. 990.—Judgm 181(2).

Wash.App. Div. 3 1991. For summary judgment purposes, “material fact” is one upon which outcome of litigation depends. CR 56(c).—*Ragland v. Lawless*, 812 P.2d 872, 61 Wash.App. 830, review denied 820 P.2d 511, 117 Wash.2d 1027, review denied 820 P.2d 511, 117 Wash.2d 1027.—Judgm 181(2).

Wash.App. Div. 3 1991. “Material fact” for summary judgment purposes is one upon which outcome of litigation depends. CR 56(c).—*Cox v. Malcolm*, 808 P.2d 758, 60 Wash.App. 894, review denied 816 P.2d 1224, 117 Wash.2d 1014.—Judgm 181(2).

Wash.App. Div. 3 1980. For purposes of summary judgment, a “material fact” is one of which outcome of the litigation depends.—*State ex rel. Murray v. Shanks*, 618 P.2d 102, 27 Wash.App. 363, review denied 94 Wash.2d 1025.—Judgm 181(2).

Wash.App. Div. 3 1980. A “material fact” precluding summary judgment is one on which the outcome of the litigation depends.—*Riste v. Eastern Washington Bible Camp, Inc.*, 605 P.2d 1294, 25 Wash.App. 299.—Judgm 181(2).

Wash.App. Div. 3 1977. A “material fact” is one upon which the outcome of the litigation depends.—*Manufacturers Acceptance Corp. v. Irving Gelb Wholesale Jewelers, Inc.*, 565 P.2d 1235, 17 Wash.App. 886, review denied 89 Wash.2d 1015.—Trial 395(5).

Wash.App. Div. 3 1977. A “material fact” which precludes granting summary judgment is one upon which the outcome of the litigation depends. RCWA 4.22.010.—*Ashcraft v. Wallingford*, 565 P.2d 1224, 17 Wash.App. 853, remanded 89 Wash.2d 1016, adhered to 579 P.2d 384, review denied 91 Wash.2d 1016.—Judgm 181(2).

Wash.App. Div. 3 1974. “Material fact” is one upon which outcome of litigation depends.—*Amant v. Pacific Power & Light Co.*, 520 P.2d 181, 10 Wash.App. 785, affirmed 529 P.2d 829, 84 Wash.2d 872.—Judgm 181(2).

W.Va. 2003. A “material fact,” for purposes of rule governing summary judgment, is one that has the capacity to sway the outcome of the litigation under the applicable law. Rules Civ.Proc., Rule 56(c).—*Chafin v. Gibson*, 578 S.E.2d 361.—Judgm 181(2).

W.Va. 2002. A “material fact,” for purposes of the rule that summary judgment is improper if there is a genuine issue of material fact, is one that has the capacity to sway the outcome of the litigation under the applicable law. Rules Civ.Proc., Rule 56(c).—*Poling v. Pre-Paid Legal Services, Inc.*, 575 S.E.2d 199, 212 W.Va. 589.—Judgm 181(2).

W.Va. 2002. A genuine issue of “material fact,” which precludes summary judgment, is one that has the capacity to sway the outcome of the litigation under the applicable law. Rules Civ.Proc., Rule 56(c).—*Belcher v. Wal-Mart Stores, Inc.*, 568 S.E.2d 19, 211 W.Va. 712.—Judgm 181(2).

W.Va. 2001. A “material fact,” which precludes summary judgment, is one that has the capacity to sway the outcome of the litigation under the applicable law. Rules Civ.Proc., Rule 56(c).—*Pritt v. Republican Nat. Committee*, 557 S.E.2d 853, 210 W.Va. 446, certiorari denied 123 S.Ct. 71, 154 L.Ed.2d 14, certiorari denied 123 S.Ct. 71, 154 L.Ed.2d 14.—Judgm 181(2).

W.Va. 1999. For summary judgment purposes, “material fact” is one that has the capacity to sway the outcome of the litigation under the applicable law.—*Stevens v. West Virginia Institute of Technology*, 532 S.E.2d 639, 207 W.Va. 370.—Judgm 181(2).

W.Va. 1999. A “material fact,” for purposes of summary judgment, is one that has the capacity to sway the outcome of the litigation under the applicable law. Rules Civ.Proc., Rule 56(c).—Smith v. Sears, Roebuck and Co., 516 S.E.2d 275, 205 W.Va. 64.—Judgm 181(2).

W.Va. 1998. A “material fact,” for summary judgment purposes, is one that has the capacity to sway the outcome of the litigation under the applicable law. Rules Civ.Proc., Rule 56(c).—Adkins v. K-Mart Corp., 511 S.E.2d 840, 204 W.Va. 215.—Judgm 181(2).

W.Va. 1997. On motion for summary judgment, “material fact” is one that has capacity to sway outcome of litigation under applicable law. Rules Civ.Proc., Rule 56(c).—Tolliver v. Kroger Co., 498 S.E.2d 702, 201 W.Va. 509.—Judgm 181(2).

W.Va. 1997. “Material fact” for purposes of summary judgment rule is one that has the capacity to sway outcome of litigation under applicable law. Rules Civ.Proc., Rule 56(c).—Sheely v. Pinion, 490 S.E.2d 291, 200 W.Va. 472.—Judgm 181(2).

W.Va. 1997. “Material fact,” genuine issue as to which will preclude summary judgment, is one that has capacity to sway outcome of litigation under applicable law. Rules Civ.Proc., Rule 56(c).—Greenfield v. Schmidt Baking Co., Inc., 485 S.E.2d 391, 199 W.Va. 447.—Judgm 181(2).

W.Va. 1996. “Genuine issue” for purposes of summary judgment rule is simply one half of trial-worthy issue, and genuine issue does not arise unless there is sufficient evidence favoring nonmoving party for reasonable jury to return verdict for that party; opposing half of trialworthy issue is present where nonmoving party can point to one or more disputed “material” facts; “material fact” is one that has capacity to sway outcome of litigation under applicable law. Rules Civ.Proc., Rule 56(c).—Craddock v. Watson, 475 S.E.2d 62, 197 W.Va. 62.—Judgm 181(2), 185(6).

W.Va. 1995. “Material fact,” on motion for summary judgment, is one that has capacity to sway outcome of litigation under applicable law. Rules Civ.Proc., Rule 56(c).—Jividen v. Law, 461 S.E.2d 451, 194 W.Va. 705.—Judgm 181(2).

Wis. 2000. “Material fact,” for summary judgment purposes, is one that impacts the resolution of the controversy. W.S.A. 802.08(2).—Strasser v. Transtech Mobile Fleet Service, Inc., 613 N.W.2d 142, 236 Wis.2d 435, 2000 WI 87.—Judgm 181(2).

Wyo. 2002. Summary judgment is a drastic remedy designed to pierce the formal allegations and reach the merits of the controversy, but only where no genuine issue of material fact is present; a fact is a “material fact” if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—Snake River Brewing Co., Inc. v. Town of Jackson, 39 P.3d 397, 2002 WY 11.—Judgm 178, 181(2).

Wyo. 2001. A “material fact,” for purposes of a summary judgment motion, is any fact that, if proved, would have the effect of establishing or refuting an essential element of a claim or defense asserted by a party. Rules Civ.Proc., Rule 56(c).—Hulse v. First American Title Co. of Crook County, 33 P.3d 122, 2001 WY 95, rehearing denied.—Judgm 181(2).

Wyo. 2000. A “material fact,” for purposes of determining whether a genuine issue of material fact precludes summary judgment, is any fact that, if proved, would have the effect of establishing or refuting an essential element of a claim or defense asserted by a party.—Unicorn Drilling, Inc. v. Heart Mountain Irr. Dist., 3 P.3d 857.—Judgm 181(2).

Wyo. 2000. For purposes of determining whether summary judgment is appropriate, a “material fact” is a fact that, if proved, would establish or refute an essential element of a claim or defense asserted by a party.—Schuler v. Community First Nat. Bank, 999 P.2d 1303.—Judgm 181(2).

Wyo. 2000. A “material fact” which, if disputed, precludes summary judgment is any fact that, if proved, would establish or refute an essential element of a claim or defense asserted by a party. Rules Civ.Proc., Rule 56.—Hulse v. First Interstate Bank of Commerce-Gillette, 994 P.2d 957, rehearing denied.—Judgm 181(2).

Wyo. 1998. A “material fact,” for purposes of summary judgment motion, is one which, if proved, would have the effect of establishing or refuting an essential element of the claim or defense asserted by the parties.—Ahrenholtz v. Time Ins. Co., 968 P.2d 946.—Judgm 181(2).

Wyo. 1997. “Material fact,” for purpose of summary judgment motion, is any fact which, if proven, would establish or refute essential element of claim or defense asserted. Rules Civ.Proc., Rule 56.—Ahearn v. Anderson-Bishop Partnership, 946 P.2d 417.—Judgm 181(2).

Wyo. 1997. “Material fact,” for summary judgment purposes, is one which has legal significance.—Nowotny v. L & B Contract Industries, Inc., 933 P.2d 452.—Judgm 181(2).

Wyo. 1996. “Material fact,” for purposes of summary judgment, is one which, if proved, would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties. Rules Civ.Proc., Rule 56.—Rue v. Carter, 919 P.2d 633.—Judgm 181(2).

Wyo. 1995. For summary judgment purposes, “material fact” is one that establishes or refutes essential element of a cause of action or defense asserted by a party.—Hamilton v. Natrona County Educ. Ass’n, 901 P.2d 381.—Judgm 181(2).

Wyo. 1993. “Material fact” which is sufficient to preclude summary judgment is one which would establish or refute essential element of cause of action or defense asserted by parties.—Moncrief v. Louisiana Land and Exploration Co., 861 P.2d 500, rehearing granted, opinion withdrawn and superseded on rehearing 861 P.2d 516.—Judgm 181(2).

Wyo. 1992. "Material fact," for purposes of determining whether factual dispute precludes summary judgment, is one that will affect outcome of the case by establishing or refuting element of action or defense.—*Thunder Hawk By and Through Jensen v. Union Pacific R. Co.*, 844 P.2d 1045, appeal after remand 891 P.2d 773.—Judgm 181(2).

Wyo. 1991. For summary judgment purposes, "material fact" is one which would establish or refute essential element of cause of action or defense asserted by parties.—*Allmaras v. Mudge*, 820 P.2d 533.—Judgm 181(2).

Wyo. 1986. Factual question did not relate to "material fact" so as to preclude summary judgment for insurers in suit to determine coverage under general liability policies, where question did not have legal significance to the dispute at hand and was not one on which outcome of litigation might depend.—*Ricci v. New Hampshire Ins. Co.*, 721 P.2d 1081.—Judgm 181(23).

Wyo. 1985. "Material fact" is one which, if proved, would have effect of establishing or refuting one of essential elements of cause of action or defenses asserted by parties, for purposes of determining whether summary judgment should be granted.—*Colorado Nat. Bank v. Miles*, 711 P.2d 390.—Judgm 181(2).

Wyo. 1985. When reviewing summary judgment on appeal, Supreme Court examines the judgment in the same light as the district court using the same information and the party moving for summary judgment has the burden of showing there is no genuine issue of material fact; a "material fact" is one which, if proved, would have the effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties. Rules Civ.Proc., Rule 56(c).—*Randolph v. Gilpatrick Const. Co., Inc.*, 702 P.2d 142.—App & E 863.

Wyo. 1985. Summary judgment is proper if there is no genuine issue as to any "material fact" and moving party is entitled to judgment as matter of law; fact is material if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action. Rules Civ.Proc., Rule 56(c).—*Allen v. Safeway Stores Inc.*, 699 P.2d 277.—Judgm 181(2), 181(3).

Wyo. 1985. "Material fact" is one which, if proved, would have effect of establishing or refuting an essential element of a cause of action or defense asserted by a party.—*O'Donnell v. City of Casper*, 696 P.2d 1278.—Judgm 181(2).

Wyo. 1984. Summary judgment should only be granted where it is clear that there are no issues of material fact involved and that inquiry into facts is unnecessary to clarify application of law; "material fact" is one which has legal significance or which would establish defense.—*Roth v. First Sec. Bank of Rock Springs, Wyo.*, 684 P.2d 93.—Judgm 181(2).

Wyo. 1983. For purposes of summary judgment, a "material fact" is one with legal significance

which affects the outcome of litigation. Rules Civ. Proc., Rule 56(c).—*Blackmore v. Davis Oil Co.*, 671 P.2d 334.—Judgm 181(2).

Wyo. 1981. A "material fact," which would preclude summary judgment, is one which would have effect of establishing or refuting essential element of cause of action or offense asserted by parties.—*Lyman v. Jennings*, 637 P.2d 259.—Judgm 181(2).

Wyo. 1981. In motion for summary judgment, "material fact" is one which, if proved, would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties.—*Kuehne v. Samedan Oil Corp.*, 626 P.2d 1035.—Judgm 181(2).

Wyo. 1980. For summary judgment, a "material fact" is one in which proof of that fact would either establish or refute an essential element of the cause of action or the defense thereto.—*MJB Investments v. Coxwell*, 611 P.2d 438.—Judgm 181(2).

Wyo. 1976. It is improper to grant summary judgment if there is any real issue of material facts; such issue of "material fact" is one which would have effect of establishing or refuting one of essential defenses asserted by party, and if asserted conflict does not meet such test, summary judgment is proper.—*Wood v. Trenchard*, 550 P.2d 490.—Judgm 181(2).

Wyo. 1975. A "material fact" sufficient to preclude summary judgment is one which controls in some way the legal relations of the parties, or which will affect result or outcome of case depending upon its resolution, or which constitutes a part of plaintiff's cause of action or defendant's defense.—*Johnson v. Soulis*, 542 P.2d 867.—Judgm 181(2).

MATERIAL FACT ISSUE

Minn.App. 1994. "Material fact issue" is one which will affect result or outcome of case depending on its resolution. 48 M.S.A., Rules Civ.Proc., Rule 56.03.—*Northwestern Nat. Cas. Co. v. Khosa, Inc.*, 520 N.W.2d 771.—Judgm 181(2).

MATERIAL FACT OR CIRCUMSTANCE

Mass.App.Ct. 1980. Fraud and concealment clause in fire policies required that there be concealment of "material fact or circumstance" in order to render policy void, and "material fact," for purposes of determining whether the policy had been rendered void, was one the knowledge or ignorance of which would naturally have influenced judgment of underwriter in making contract at all, or in estimating degree or character of risk, or in fixing rate of premium.—*In-Towne Restaurant Corp. v. Aetna Cas. and Sur. Co.*, 402 N.E.2d 1385, 9 Mass.App.Ct. 534.—Insurance 2988.

MATERIAL FACTS

C.A.D.C. 1989. Structure maps prepared by pipeline company prior to determination that gas produced from certain wells was produced from reservoirs discovered after July 27, 1976, so as to entitled producer to incentive price under the Natural Gas Policy Act, were not omitted "material

facts” so as to allow reopening of determination, but were nothing more than “professional opinions”; “material fact” within the statute providing for reopening relates to the basic information from which geologists and engineers deduce the existence or nonexistence of a new reservoir, and not to the conclusions that they may draw from the data. Natural Gas Policy Act of 1978, § 503(d), 15 U.S.C.A. § 3413(d).—ANR Pipeline Co. v. F.E.R.C., 870 F.2d 717, 276 U.S.App.D.C. 303.—Gas 14.3(4).

C.A.9 (Cal.) 1996. “Material facts” for summary judgment purposes are those necessary to proof or defense of claim and are determined by reference to substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—National American Ins. Co. of California v. Certain Underwriters at Lloyd’s London, 93 F.3d 529.—Fed Civ Proc 2470.1.

C.A.2 (Conn.) 1997. For purposes of statute barring manipulative acts in conjunction with tender offer, “material facts” include those which affect probable future of company and those which may affect desire of investors to buy, sell, or hold company’s securities, as well as any fact which in reasonable and objective contemplation might affect value of corporation’s stock or securities. Securities Exchange Act of 1934, § 14(e), 15 U.S.C.A. § 78n(e).—S.E.C. v. Mayhew, 121 F.3d 44.—Sec Reg 52.39(3).

C.A.8 (Iowa) 1987. “Material facts,” such as debtor must disclose to prevent creditor from successfully invoking statutory exception to discharge, are those facts touching upon essence of debtor’s transaction with creditor. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—Matter of Van Horne, 823 F.2d 1285.—Bankr 3353(1.40).

C.A.6 (Ky.) 1995. “Material facts” that will defeat otherwise supported motion for summary judgment are only those facts that might affect outcome of action under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Talley v. Bravo Pitino Restaurant, Ltd., 61 F.3d 1241, 1995 Fed.App. 250P.—Fed Civ Proc 2470.1.

C.A.5 (La.) 1998. “Material facts,” for purposes of summary judgment motion, are those that might affect the outcome of the suit under the governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Smith v. Brenoetsy, 158 F.3d 908.—Fed Civ Proc 2470.1.

C.A.5 (La.) 1990. “Material facts,” for summary judgment purposes, are facts that might affect outcome of action under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Johnson v. Odom, 910 F.2d 1273, certiorari denied 111 S.Ct. 1387, 499 U.S. 936, 113 L.Ed.2d 443, appeal after remand 18 F.3d 318, rehearing denied.—Fed Civ Proc 2470.1.

C.A.8 (Mo.) 1984. In tender offer situation, federal securities law requires accurate disclosure of “material facts,” i.e., facts which in reasonable or objective contemplation might affect value of corporation’s stock or securities. Securities Exchange Act of 1934, § 14(e), 15 U.S.C.A. § 78n(e).—

Feldbaum v. Avon Products, Inc., 741 F.2d 234.—Sec Reg 52.39(3).

C.A.3 (Pa.) 1993. For summary judgment purposes, facts that could alter outcome or case are “material facts,” and disputes are “genuine” if evidence exists from which rational person could conclude that position of person with burden of proof on disputed issue is correct. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Clark v. Modern Group Ltd., 9 F.3d 321, rehearing and rehearing denied.—Fed Civ Proc 2470.1.

C.A.5 (Tex.) 1990. “Material facts,” for purposes of rule making it unlawful to solicit shareholder action by means of proxy statements that omit to state any material facts, is that information as to which a plaintiff can show a substantial likelihood that a reasonable shareholder would have considered it important in deciding how to vote; standard does not require proof of a substantial likelihood that disclosure of omitted fact would have caused reasonable investor to change his vote but that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—Justin Industries, Inc. v. Choctaw Securities, L.P., 920 F.2d 262.—Sec Reg 49.22(2).

C.A.10 (Utah) 1971. Allegations that corporation and directors failed to furnish shareholders with information necessary to determination of the fairness of key employees’ stock bonus plan, which was to be voted on by the shareholders and which was thereafter approved, resulting in alleged dilution of shareholders’ interests, did not relate to “material facts” within rule making it unlawful to misstate or omit such facts to defraud in connection with the purchase or sale of any security, in absence of any allegation that because of the lack of such information a majority of the stockholders were deceived into ratifying a plan which they otherwise might have disapproved. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Review 71 v. Alloys Unlimited, Inc., 450 F.2d 482.—Sec Reg 60.28(13).

W.D.Ark. 1992. “Material facts,” for purposes of summary judgment motion, are facts material to deciding case under relevant legal standard. Fed. Rules Civ.Proc.Rule 56(e), 28 U.S.C.A.—West v. Clinton, 786 F.Supp. 803.—Fed Civ Proc 2470.1.

C.D.Cal. 2001. “Material facts,” for summary judgment purposes, are those that may affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Fleener v. Trinity Broadcasting Network, 203 F.Supp.2d 1142.—Fed Civ Proc 2470.1.

E.D.Cal. 1995. “Material facts” precluding summary judgment are those necessary to proof or defense of claim, and are determined by reference to substantive law, so that fact is material if it could affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Baugus v. Brunson, 890 F.Supp. 908.—Fed Civ Proc 2470.1.

N.D.Cal. 2002. “Material facts,” for summary judgment purposes, are those that might affect

outcome of case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Levi Strauss & Co. v. GTFM, Inc., 196 F.Supp.2d 971.—Fed Civ Proc 2470.1.

N.D.Cal. 1995. “Material facts” which preclude entry of summary judgment are those which, under applicable substantive law, may affect outcome of case; substantive law will identify which facts are material. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Twin Books Corp. v. Walt Disney Co., 877 F.Supp. 496, reversed 83 F.3d 1162.—Fed Civ Proc 2470.1.

N.D.Cal. 1994. For purposes of summary judgment, “material facts” are those which may affect outcome of case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Parravano v. Babbitt, 861 F.Supp. 914, affirmed 70 F.3d 539, certiorari denied 116 S.Ct. 2546, 518 U.S. 1016, 135 L.Ed.2d 1066.—Fed Civ Proc 2470.1.

S.D.Cal. 1996. For summary judgment purposes, “material facts” are those necessary to proof or defense of claim, and are determined by reference to substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Feigel v. F.D.I.C., 935 F.Supp. 1090.—Fed Civ Proc 2470.1.

D.Del. 1992. Only disputes over facts that might affect outcome of suit under governing law constitute “material facts” capable of defeating summary judgment. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Hall v. Delaware Council on Crime and Justice, 780 F.Supp. 241, affirmed 975 F.2d 1549.—Fed Civ Proc 2470.1.

D.D.C. 1996. For purposes of summary judgment, “material facts” are those facts that might affect outcome of suit under governing law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Tantleff Trusts v. F.D.I.C., 938 F.Supp. 14.—Fed Civ Proc 2470.1.

D.D.C. 1996. For purposes of deciding summary judgment motion, “material facts” are facts in dispute that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Domen v. National Rehabilitation Hosp., Inc., 925 F.Supp. 830.—Fed Civ Proc 2470.1.

D.D.C. 1995. “Material facts” for summary judgment purposes are those that might affect outcome of suit under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Hayes v. Shalala, 902 F.Supp. 259.—Fed Civ Proc 2470.1.

D.D.C. 1994. On motion for summary judgment, “material facts” are those that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Richardson v. National Rifle Ass’n, 871 F.Supp. 499, reconsideration denied 879 F.Supp. 1.—Fed Civ Proc 2470.1.

D.D.C. 1975. “Material facts,” within meaning of Securities and Exchange Commission rule barring use of manipulative and deceptive devices in securities transactions, are those which reasonable investor might have considered important in making an investment decision. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Securi-

ties and Exchange Commission v. General Refractories Co., 400 F.Supp. 1248.—Sec Reg 60.28(11).

M.D.Fla. 1995. “Material facts” which preclude summary judgment are those for which disputes might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Paasch v. City of Safety Harbor, 915 F.Supp. 315, affirmed 78 F.3d 600.—Fed Civ Proc 2470.1.

M.D.Fla. 1995. “Material facts” for summary judgment purposes are those which will affect outcome of trial under governing law. Fed.Rules Civ. Proc.Rule 12(b)(6), 28 U.S.C.A.—Ware v. Barr, 883 F.Supp. 654, vacated 82 F.3d 429.—Fed Civ Proc 2470.1.

N.D.Ga. 1993. Facts which in good faith are disputed but which do not resolve or affect the outcome of suit are not “material facts” and do not properly preclude entry of summary judgment.—U.S. v. 1419 Mount Alto Road, Rome, Floyd County, Ga., 830 F.Supp. 1476.—Fed Civ Proc 2470.1.

S.D.Ga. 1996. For purposes of summary judgment, “material facts” are only those facts that legitimately affect legal result of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Wright v. Glynn County Bd. of Com’rs, 932 F.Supp. 1476.—Fed Civ Proc 2470.1.

N.D.Ill. 2000. Statement of facts required by local rule to accompany motions for summary judgment, should be limited to “material facts”, those pertinent to outcome of issues identified in summary judgment motion. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.; U.S.Dist.Ct.Rules N.D.Ill., General Rule 56.1(a).—Malec v. Sanford, 191 F.R.D. 581.—Fed Civ Proc 2547.1.

N.D.Ind. 1992. For purposes of summary judgment, substantive law determines which facts are “material facts,” that is, which facts might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Hayden v. La-Z-Boy Chair Co., 838 F.Supp. 384, affirmed 9 F.3d 617, 125 A.L.R. Fed. 717, certiorari denied 114 S.Ct. 1371, 511 U.S. 1004, 128 L.Ed.2d 47.—Fed Civ Proc 2470.1.

D.Md. 1996. For purpose of summary judgment motion, “material facts” are those facts which substantive law identifies as facts that might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Stash, Inc. v. Palmgard Intern., Inc., 937 F.Supp. 531.—Fed Civ Proc 2470.1.

D.Md. 1996. For summary judgment purposes, “material facts” are those facts which the substantive law identifies as facts that might affect outcome of the suit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Korotki v. Attorney Services Corp. Inc., 931 F.Supp. 1269, affirmed 131 F.3d 135, certiorari denied 118 S.Ct. 1797, 523 U.S. 1118, 140 L.Ed.2d 938.—Fed Civ Proc 2470.1.

D.Md. 1995. Summary judgment cannot be granted where dispute exists as to “material facts,” which are those which, under applicable substantive law, may affect the outcome of the case. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Fusco v.

GE Government Services, Inc., 897 F.Supp. 926.—Fed Civ Proc 2470.1.

W.D.Mich. 1996. "Material facts" for summary judgment purposes are facts which are defined by substantive law and are necessary to apply law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Van Dorn v. Menominee County, 935 F.Supp. 918.—Fed Civ Proc 2470.1.

W.D.Mich. 1994. "Material facts" precluding summary judgment are facts which are defined by substantive law and are necessary to apply the law, and dispute over trivial facts which are not necessary in order to apply the substantive law does not prevent granting of summary judgment. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—VanDenBerg v. Lo-seth, 857 F.Supp. 1193.—Fed Civ Proc 2470.1.

W.D.Mich. 1993. "Material facts," for purposes of summary judgment, are facts which are defined by substantive law and are necessary to apply law.—Hebein v. IRECO, Inc., 827 F.Supp. 1326.—Fed Civ Proc 2470.1.

W.D.Mich. 1993. "Material facts" which preclude summary judgment are facts which are defined by substantive law and are necessary to apply the law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Cavazos v. Foster, 822 F.Supp. 438.—Fed Civ Proc 2470.1.

D.N.J. 1992. Investors' contention that financial corporation's misrepresentations or omissions regarding loan loss reserves met the "material facts" element for purposes of stating claim of securities fraud under Securities Exchange Act. Fed.Rules Civ.Proc.Rule 12(b), 28 U.S.C.A.; Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Lerch v. Citizens First Bancorp, Inc., 805 F.Supp. 1142.—Sec Reg 60.27(6), 60.28(13).

E.D.N.Y. 2001. Under rule that plaintiff claiming securities fraud must allege that misrepresentation or omission is material, "material facts" include those that affect the probable future of the company and that may affect the desire of investors to buy, sell, or hold the company's securities, and regarding "omissions," there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.; Securities Exchange Act of 1934, §§ 10(b), 20A, as amended, 15 U.S.C.A. §§ 78j(b), 78t-1; 17 C.F.R. § 240.10b-5.—Manavazian v. Atec Group, Inc., 160 F.Supp.2d 468.—Sec Reg 60.28(11), 60.46.

N.D.N.Y. 1993. For purposes of determining whether genuine issues of material fact exist to preclude summary judgment, "material facts" are defined as those which might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Eagle Comtronics, Inc. v. Northeast Filter Co., Inc., 816 F.Supp. 152.—Fed Civ Proc 2470.1.

N.D.N.Y. 1992. For purposes of summary judgment motion, "material facts" are those which might affect outcome of suit under governing law.

Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Smythe v. American Red Cross Blood Services Northeastern New York Region, 797 F.Supp. 147.—Fed Civ Proc 2470.1.

S.D.N.Y. 1996. "Material facts," omission of which would result in Securities Act liability for material misstatement or omission in registration statement or prospectus, include not only information disclosing earnings and distributions of company but also facts affecting probable future of company and those which may affect desire of investors to buy, sell or hold company's securities. Securities Act of 1933, §§ 11, 12(2), 15 U.S.C.A. §§ 77k, 77l (2).—Klein on Behalf of Ira v. PDG Remediation, Inc., 937 F.Supp. 323.—Sec Reg 25.18, 25.56.

S.D.N.Y. 1974. For purposes of suit under statute and rule relating to use of deceptive devices in sale of securities, "material facts" are those which reasonable investor would deem important in making his decision to buy security. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Herzfeld v. Laventhol, Kreckstein, Horwath & Horwath, 378 F.Supp. 112, affirmed in part, reversed in part 540 F.2d 27.—Sec Reg 60.46.

S.D.N.Y. 1972. If an attorney negligently or willfully withholds from his client information material to the client's decision to pursue a given course of action, or to abstain therefrom, the attorney is liable for client's losses suffered as a result of action taken without benefit of the undisclosed material facts, "material facts" being those which, if known to the client, might well have caused him, acting as a reasonable man, to alter his proposed course of conduct.—Spector v. Mermelstein, 361 F.Supp. 30, affirmed in part, reversed in part 485 F.2d 474.—Atty & C 109.

S.D.N.Y. 1967. Within rule making affirmative misrepresentation or omission of material facts essential element of recovery for violation of Securities Exchange Act section dealing with deceptive devices, "material facts" are those facts to which reasonable man would attach importance in determining his choice of action in transaction in question and encompass those facts which in reasonable and objective contemplation might affect value of corporation's stock or securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—West v. Zurhorst, 280 F.Supp. 574.—Sec Reg 60.46.

M.D.N.C. 2001. "Material facts," for purposes of the rule that summary Judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, are those that might affect the outcome of the suit under the governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Gibson v. Henderson, 129 F.Supp.2d 890.—Fed Civ Proc 2470.1.

M.D.N.C. 1996. "Material facts" for summary judgment purposes are those identified by controlling law as essential elements of claims asserted by parties. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Isquierdo v. Frederick, 922 F.Supp. 1072, affirmed 121 F.3d 698.—Fed Civ Proc 2470.1.

E.D.Pa. 1992. "Material facts," precluding summary judgment, are those facts that might affect outcome of suit under substantive law governing claims made. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Payton v. Vaughn, 798 F.Supp. 258.—Fed Civ Proc 2470.1.

M.D.Pa. 1996. "Material facts," for summary judgment purposes, are those which will affect the outcome of the trial under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—A.L. Blades & Sons, Inc. v. Yerusalmi, 921 F.Supp. 251, reversed 121 F.3d 865.—Fed Civ Proc 2470.1.

M.D.Pa. 1995. "Material facts" for summary judgment purposes are those which will affect outcome of trial under governing law. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—Bloomsburg Landlords Ass'n, Inc. v. Town of Bloomsburg, 912 F.Supp. 790, affirmed 96 F.3d 1431.—Fed Civ Proc 2470.1.

M.D.Pa. 1995. "Material facts," as to which existence of genuine issue will preclude summary judgment, are those which will affect outcome of trial under governing law. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—Gould, Inc. v. Arkwright Mut. Ins. Co., 907 F.Supp. 103.—Fed Civ Proc 2470.1.

M.D.Pa. 1995. For purposes of summary judgment, "material facts" are those which will affect outcome of trial under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Estate of Franks v. Allstate Ins. Co., 895 F.Supp. 77.—Fed Civ Proc 2470.1.

M.D.Pa. 1995. "Material facts" are those which will affect outcome of trial under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Wellsboro Hotel Co. v. Prins, 894 F.Supp. 170.—Fed Civ Proc 2470.1.

M.D.Pa. 1994. "Material facts" for purpose of summary judgment are those which will affect outcome of trial under governing law; in determining whether issue of material fact exists, court must consider all evidence in light most favorable to nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Carroll v. Borough of State College, 854 F.Supp. 1184, affirmed 47 F.3d 1160.—Fed Civ Proc 2470.1, 2543.

M.D.Pa. 1992. "Material facts," for purpose of summary judgment motion, are those which will affect outcome of trial under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Reeder v. Sybron Transition Corp., 142 F.R.D. 607.—Fed Civ Proc 2470.1.

M.D.Pa. 1991. For purposes of summary judgment motion, "material facts" are those which will effect outcome of trial under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Federal Kemper Ins. Co. v. Jones, 777 F.Supp. 405.—Fed Civ Proc 2470.1.

M.D.Pa. 1991. "Material facts," for purposes of summary judgment motion, are those which will affect outcome of trial under governing law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Eureka

Paper Box Co. v. WBMA, Inc., Voluntary Employee Ben. Trust, 767 F.Supp. 642.—Fed Civ Proc 2470.1.

E.D.Va. 1994. "Material facts" which preclude summary judgment are those facts whose determination will affect outcome of suit, and issue of material fact is considered "genuine" if evidence is such that reasonable jury could find for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Advanced Computer Services of Michigan, Inc. v. MAI Systems Corp., 845 F.Supp. 356.—Fed Civ Proc 2470.1.

W.D.Wash. 1995. For purposes of deciding summary judgment motion, "material facts" are those which might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Brooks v. Burlington Northern R.R., 910 F.Supp. 505.—Fed Civ Proc 2470.1.

E.D.Wis. 1995. "Material facts," disputes over which preclude summary judgment, are those that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Kaufmann v. Saari, 889 F.Supp. 1105.—Fed Civ Proc 2470.1.

E.D.Wis. 1995. For purpose of summary judgment motion, "material facts" are those facts which, under governing substantive law, might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Matney v. County of Kenosha, 887 F.Supp. 1235, affirmed 86 F.3d 692.—Fed Civ Proc 2470.1.

E.D.Wis. 1994. "Material facts" for purposes of summary judgment motion are those facts which, under governing substantive law, might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Westphal v. Waukesha Dresser/Waukesha Engine Div., a Div. of Dresser Industries, Inc., 855 F.Supp. 1009.—Fed Civ Proc 2470.1.

E.D.Wis. 1994. "Material facts" for summary judgment purposes are those facts which, under governing substantive law, might affect outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Akrosil Div. of Intern. Paper Co. v. Ritrama Duramark, Inc., 847 F.Supp. 623.—Fed Civ Proc 2470.1.

Bkrtcy.N.D.Tex. 1995. For summary judgment purposes, "material facts" are those that will affect outcome of lawsuit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Hudson, 182 B.R. 741, affirmed 107 F.3d 355.—Fed Civ Proc 2470.1.

Bkrtcy.N.D.Tex. 1994. "Material facts" that will defeat summary judgment motion if they are disputed are those that will affect outcome of lawsuit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—In re Marx, 171 B.R. 218.—Fed Civ Proc 2470.1.

Fed.Cl. 1995. Only disputes over "material facts," facts that affect outcome of suit, preclude entry of summary judgment. RCFC, Rule 56(c), 28 U.S.C.A.—Lee v. U.S., 32 Fed.Cl. 530.—Fed Cts 1120.

Fed.Cl. 1993. "Material facts" for purposes of summary judgment, are those which substantive law identifies as affecting outcome of suit. RCFC,

Rule 56, 28 U.S.C.A.—*Land v. U.S.*, 29 Fed.Cl. 744.—Fed Cts 1120.

Cal.App. 2 Dist. 1962. Insured's misrepresentation of his medical history of substernal pain and auricular fibrillation requiring relief by medication, constituted misrepresentation of "material facts," sufficient to support a rescission of life policy. *West's Ann. Insurance Code*, §§ 331, 359.—*Burns v. Prudential Ins. Co. of America*, 20 Cal.Rptr. 535, 201 Cal.App.2d 868.—*Insurance* 3003(11).

Cal.Super. 1942. An accused who on leaving regular employment opened clothing business which he supervised but which was financially unsuccessful from the beginning remained "unemployed" after opening the business within the Unemployment Insurance Act and could not be convicted of withholding "material facts" for purpose of obtaining benefits of the act, because of his failure to disclose his activities in connection with the business. *Gen. Laws, Act 8780d*, §§ 6.5, 9.2, 101(a).—*People v. Nest*, 128 P.2d 444, 53 Cal.App.2d Supp. 856.—*Social S* 386, 751.

Conn. 1909. During a trial to a jury, the legal sufficiency of the "material facts"—i. e., the facts constituting a part of plaintiff's case as he presents it—put in issue by allegations of the complaint and denials of the answer, cannot be questioned.—*Elie v. C. Cowles & Co.*, 73 A. 258, 82 Conn. 236.—*Trial* 165.

Conn.App. 1985. For purpose of determining whether there are material facts at issue precluding summary judgment, "material facts" are defined as facts which will make difference in result.—*Lopez v. United Nurseries, Inc.*, 490 A.2d 1027, 3 Conn. App. 602.—*Judgm* 181(2).

Del.Ch. 1999. "Material facts" that corporate fiduciaries have a duty to disclose when seeking stockholder action are those facts for which there is a substantial likelihood that a reasonable person would consider them important in deciding how to vote.—*O'Reilly v. Transworld Healthcare, Inc.*, 745 A.2d 902.—*Corp* 180, 310(1).

Del.Ch. 1999. Corporate fiduciaries, including corporate directors, majority stockholders, and presumably minority controlling stockholders, have a duty to disclose all material facts when seeking stockholder action, and "material facts" are those facts for which there is a substantial likelihood that a reasonable person would consider them important in deciding how to vote.—*Krim v. ProNet, Inc.*, 744 A.2d 523.—*Corp* 180, 310(1).

Ga.App. 1910. The phrases "immaterial matters" and "collateral attendant facts" are primarily not absolutely synonymous, for collateral attendant facts may be material; but, when used in an instruction, where the phrase "collateral attendant facts" is placed in antithesis to the phrase "material facts," they by every fair rule of construction become, for the nonce, equivalent in meaning.—*Blanchard v. State*, 69 S.E. 313, 8 Ga.App. 419.—*Trial* 286.

Ill. 1950. In criminal case, "material facts" are final essential elements of crime, being ultimate

conclusions of fact from every variety of evidence tending to establish them.—*People v. Ruffin*, 94 N.E.2d 433, 406 Ill. 437.—*Crim Law* 755.5.

Ill.App. 4 Dist. 2000. Advertised assertions that oil company's premium gasolines were better for the environment and a consumer's car were "material facts," for purposes of consumer fraud claim under Consumer Fraud and Deceptive Business Practices Act, prohibiting misstatement or concealment, suppression or omission of material fact, because consumers would be expected to rely on those facts when deciding whether to purchase gasoline, regardless of whether they actually relied on those statements. *S.H.A. 815 ILCS 505/1 et seq.*—*Oliveira v. Amoco Oil Co.*, 244 Ill.Dec. 455, 726 N.E.2d 51, 311 Ill.App.3d 886, rehearing denied, appeal allowed 189 Ill.2d 690, appeal allowed 248 Ill.Dec. 604, 734 N.E.2d 895, 189 Ill.2d 690, reversed in part, vacated in part 267 Ill.Dec. 14, 776 N.E.2d 151, 201 Ill.2d 134, rehearing denied.—*Cons Prot* 7.

La.App. 1 Cir. 2002. Facts are "material facts" for summary judgment purposes if they potentially insure or preclude recovery, affect a litigant's ultimate success, or determine the outcome of the legal dispute.—*Mobil Exploration & Producing U.S. Inc. v. Certain Underwriters Subscribing to Cover Note 95-3317(A)*, 837 So.2d 11, 2001-2219 (La.App. 1 Cir. 11/20/02), rehearing denied, writ denied 841 So.2d 805, 2003-0418 (La. 4/21/03).—*Judgm* 181(2).

La.App. 1 Cir. 2000. "Material facts," for purposes of summary judgment, are those that potentially ensure or preclude recovery, affect the litigant's ultimate success, or determine the outcome of a legal dispute. *LSA-C.C.P. art. 966, subd. B.*—*Walker v. Acadian Builders of Gonzales, Inc.*, 797 So.2d 690, 1999-0297 (La.App. 1 Cir. 5/19/00), appeal after remand 835 So.2d 827, 2001-2534 (La. App. 1 Cir. 11/8/02).—*Judgm* 181(2).

La.App. 1 Cir. 1999. "Material facts" that can preclude entry of summary judgment are those that potentially insure or preclude recovery, affect the litigant's ultimate success, or determine the outcome of the legal dispute.—*Ross v. Schwegmann Giant Super Markets, Inc.*, 734 So.2d 910, 1998-1036 (La.App. 1 Cir. 5/14/99), writ denied 748 So.2d 444, 1999-1741 (La. 10/1/99).—*Judgm* 181(2).

La.App. 1 Cir. 1998. For purposes of summary judgment motion, "material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. *LSA-C.C.P. art. 966.*—*Genusa v. Dominique*, 708 So.2d 784, 1997-0047 (La.App. 1 Cir. 2/20/98).—*Judgm* 181(2).

La.App. 1 Cir. 1997. For summary judgment purposes, "material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. *LSA-C.C.P. art. 966.*—*Bellsouth Telecommunications, Inc. v. Industrial Enterprises, Inc.*, 690 So.2d 145, 1996-0682 (La.App. 1 Cir. 2/14/97).—*Judgm* 181(2).

La.App. 1 Cir. 1996. For summary judgment purposes, "material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Allain-Lebreton Co. v. Exxon Corp., 694 So.2d 296, 951576 (La.App. 1 Cir. 4/4/96).—Judgm 181(2).

La.App. 1 Cir. 1996. For summary judgment purposes, "material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Amoco Production Co. v. Fina Oil & Chemical Co., 670 So.2d 502, 1995-1185 (La.App. 1 Cir. 2/23/96), rehearing denied, writ denied 673 So.2d 1037, 1996-1024 (La. 5/31/96).—Judgm 181(2).

La.App. 1 Cir. 1996. "Material facts," for purposes of summary judgment, are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of a legal dispute. LSA-C.C.P. art. 966, subd. B.—Johnson v. Wetherspoon, 669 So.2d 589, 1995-1280 (La.App. 1 Cir. 2/23/96), writ granted 672 So.2d 669, 1996-0744 (La. 5/10/96), affirmed 694 So.2d 203, 1996-0744 (La. 5/20/97), rehearing denied.—Judgm 181(2).

La.App. 1 Cir. 1995. "Material facts," for summary judgment purposes, are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of a legal dispute. LSA-C.C.P. art. 966.—Middleton v. International Maintenance, 671 So.2d 420, 1995-0238 (La.App. 1 Cir. 10/6/95), writ denied 667 So.2d 523, 1995-2682 (La. 1/12/96).—Judgm 181(2).

La.App. 1 Cir. 1994. "Material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C. art. 966.—Mikell v. Hoffman-Laroche, Inc., 649 So.2d 75, 1994-0242 (La. App. 1 Cir. 12/22/94).—Judgm 181(2).

La.App. 1 Cir. 1993. "Material facts" which preclude summary judgment are those which are essential to plaintiff's cause of action under applicable theory of recovery and without which plaintiff could not prevail; "material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Smith v. Our Lady of the Lake Hosp., Inc., 624 So.2d 1239.—Judgm 181(2).

La.App. 1 Cir. 1993. Fact is "material" for summary judgment purposes if it is essential to plaintiff's cause of action under applicable theory of recovery and it is fact without which plaintiff could not prevail; "material facts" are those that potentially insure or preclude recovery, affect of litigant's ultimate success, or determine outcome of legal dispute.—Cantrelle v. State Farm Gen. Ins. Co., 618 So.2d 997.—Judgm 181(2).

La.App. 1 Cir. 1993. "Material facts" which preclude summary judgment are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Central Progressive

Bank v. St. Tammany Parish Sheriff's Office, 618 So.2d 986, writ denied 620 So.2d 851.—Judgm 181(2).

La.App. 1 Cir. 1992. "Material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute.—Smith v. Our Lady of the Lake Hosp., Inc., 612 So.2d 816, rehearing denied 624 So.2d 1239, writ granted 632 So.2d 768, 1993-2512 (La. 2/25/94), affirmed in part, reversed in part 639 So.2d 730, 1993-2512 (La. 7/5/94), rehearing denied, appeal after remand 680 So.2d 1163, 1996-1837 (La. 9/27/96), rehearing denied 683 So.2d 258, 1996-1837 (La. 11/8/96).—Judgm 181(2).

La.App. 1 Cir. 1991. "Material facts," for purposes of summary judgment, are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Schroeder v. Board of Sup'rs of Louisiana State University, 577 So.2d 1074, writ granted 581 So.2d 668, reversed 591 So.2d 342, rehearing denied, appeal after remand 653 So.2d 612, 940909, 940910 (La.App. 1 Cir. 3/3/95), rehearing denied, writ denied 660 So.2d 480, 1995-1504 (La. 9/22/95), writ denied 660 So.2d 480, 1995-1509 (La. 9/22/95).—Judgm 181(2).

La.App. 3 Cir. 2001. On motion for summary judgment, facts are "material facts" if they determine outcome of legal dispute. LSA-C.C.P. art. 966.—Isadore v. Probe Offshore, L.L.C., 815 So.2d 876, 2001-777 (La.App. 3 Cir. 12/19/01), writ granted 812 So.2d 659, 2002-0036 (La. 4/12/02).—Judgm 181(2).

La.App. 3 Cir. 2001. "Material facts" on summary judgment are those that determine the outcome of the legal dispute. LSA-C.C.P. art. 966.—Arthur v. City of DeRidder, 799 So.2d 589, 2001-0305 (La.App. 3 Cir. 10/3/01), rehearing denied.—Judgm 181(2).

La.App. 3 Cir. 1999. Facts are "material facts," for purposes of summary judgment, if they determine the outcome of the legal dispute. LSA-C.C.P. art. 966.—Gomez v. Sundowner Offshore Services, Inc., 745 So.2d 104, 1999-521 (La.App. 3 Cir. 10/6/99).—Judgm 181(2).

La.App. 3 Cir. 1996. For summary judgment purposes, "material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966.—Nicholson v. Calcaisieu Parish Police Jury, 685 So.2d 507, 1996-314 (La.App. 3 Cir. 12/11/96).—Judgm 181(2).

La.App. 3 Cir. 1994. For summary judgment purposes, "material facts" are those which potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966, subd. B.—Giordano v. Rheem Mfg. Co., 643 So.2d 492, 1993-1614 (La. App. 3 Cir. 10/5/94).—Judgm 181(2).

La.App. 3 Cir. 1993. "Material facts" are those that potentially insure or preclude recovery, affect litigant's ultimate success, or determine outcome of legal dispute. LSA-C.C. art. 3079.—Mar-Len of

Louisiana, Inc. v. Meyer and Associates, Inc., 624 So.2d 967.—Fraud 18.

La.App. 4 Cir. 2001. Generally, “material facts” for summary judgment purposes are those that potentially insure or preclude recovery, affect the litigant’s ultimate success, or determine the outcome of a legal dispute. LSA-C.C.P. art. 966, subd. B.—Chacon v. Lykes Bros. Steamship Co., Inc., 797 So.2d 105, 2001-0495 (La.App. 4 Cir. 9/5/01).—Judgm 181(2).

La.App. 4 Cir. 1999. Generally, “material facts,” for summary judgment purposes, are those that potentially insure or preclude recovery, affect the litigant’s ultimate success, or determine the outcome of a legal dispute.—Billes/Manning Architects v. Accountemps, Div. of Robert Half of Louisiana, Inc., 742 So.2d 728, 1998-3044 (La.App. 4 Cir. 9/15/99).—Judgm 181(2).

La.App. 4 Cir. 1996. Fact is “material” for purposes of summary judgment if it is essential to plaintiff’s cause of action under applicable theory of recovery and without which plaintiff could not prevail; “material facts” are generally those that potentially ensure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute; because materiality is determined by applicable substantive law, whether particular fact in dispute is material can be seen only in light of the substantive law applicable to case.—Hall v. Equitable Shipyard, Inc., 670 So.2d 543, 1995-1754 (La.App. 4 Cir. 2/29/96).—Judgm 181(2).

La.App. 4 Cir. 1995. Generally, “material facts,” for purposes of summary judgment, are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966, subd. B.—Leflore v. Coburn, 665 So.2d 1323, 1995-0690, 1995-0249 (La.App. 4 Cir. 12/28/95), rehearing denied, writ denied 670 So.2d 1234, 1996-0411 (La. 3/29/96), writ denied 670 So.2d 1234, 1996-0453 (La. 3/29/96).—Judgm 181(2).

La.App. 4 Cir. 1995. Generally, “material facts,” for summary judgment purposes, are those that potentially ensure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966, subd. B.—Brandner v. New Orleans Office Supply Center, Inc., 654 So.2d 858, 1994-2534 (La.App. 4 Cir. 4/26/95), writ denied 657 So.2d 1039, 1995-1298 (La. 6/30/95).—Judgm 181(2).

La.App. 4 Cir. 1995. For summary judgment purposes, generally, “material facts” are those that potentially insure or preclude recovery, affect litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966, subd. B.—South Central Bell Telephone Co. v. Sewerage and Water Bd. of New Orleans, 652 So.2d 1090, 1994-1648, 1994-1649 (La.App. 4 Cir. 3/16/95), writ denied 654 So.2d 1090, 1995-0949 (La. 5/19/95).—Judgm 181(2).

La.App. 4 Cir. 1994. “Material facts,” disputes about which preclude summary judgment, are those that potentially insure or preclude recovery, affect

litigant’s ultimate success, or determine outcome of legal dispute. LSA-C.C.P. art. 966, subd. B.—Polk v. Blaque, 633 So.2d 1382, 1993-1740 (La.App. 4 Cir. 3/15/94), writ denied 637 So.2d 484, 1994-0923 (La. 5/20/94).—Judgm 181(2).

La.App. 4 Cir. 1964. The law applicable to a given case determines what is a material fact for summary judgment purposes; “material facts” have some legal significance, that is, control in some way the legal relations of the parties.—Ahten v. Citizens Homestead Ass’n, 163 So.2d 403, application denied Piton v. Citizens Homestead Association, 165 So.2d 482, 246 La. 584.—Judgm 181(2).

La.App. 5 Cir. 2002. “Material facts,” as would preclude summary judgment, are those that have the potential to insure or preclude recovery or determine the outcome of a legal dispute.—Boudreaux v. L.D. Brinkman & Co., Inc., 820 So.2d 1118, 02-31 (La.App. 5 Cir. 5/29/02).—Judgm 181(2).

La.App. 5 Cir. 1995. “Material facts,” for purposes of summary judgment, are those which potentially insure or preclude recovery, affect litigant’s ultimate success or determine the outcome of legal dispute. LSA-C.C.P. art. 967.—Advanced Orthopedics, L.L.C. v. Moon, 656 So.2d 1103, 95-76 (La.App. 5 Cir. 5/30/95).—Judgm 181(2).

Mich. 1922. The “material facts” of an issue of fact are such as are necessary to determine the issue.—Woolman Const. Co. v. Sampson, 188 N.W. 420, 219 Mich. 125.

Mo.App. E.D. 1989. “Material facts,” such that a genuine issue with respect thereto precludes summary judgment, are facts that have such legal probative value as would control or determine the litigation. V.A.M.R. 74.04(c).—Schneider v. Forsythe Group, Inc., 782 S.W.2d 139.—Judgm 181(2).

Mo.App. W.D. 1991. Facts of such probative value as would control or determine litigation constitute “material facts.”—Irwin v. Wal-Mart Stores, Inc., 813 S.W.2d 99.—Judgm 181(2).

Mo.App. 1978. The existence of minor factual disputes does not bar summary judgment; to have such an effect, the disputed issues must involve “material facts,” i. e., those which have legal probative force as to a controlling issue.—Kohn v. Cohn, 567 S.W.2d 441.—Judgm 181(2).

Mo.App. 1907. As used in the law relating to fraud, requiring that false representations, in order to be actionable must relate to “material facts,” means a fact or facts necessarily having some bearing on the value of the subject of the negotiation.—Champion Funding & Foundry Co. v. Heskett, 102 S.W. 1050, 125 Mo.App. 516.

N.Y. 1996. “Material facts” that reinsured is required by duty of utmost good faith to disclose to potential reinsurers are those likely to influence decisions of underwriters; if reinsured had revealed them, they would have either prevented reinsurer from issuing policy or prompted reinsurer to issue it at higher premium.—Matter of Liquidation of Union Indem. Ins. Co. of New York, 651 N.Y.S.2d

383, 89 N.Y.2d 94, 674 N.E.2d 313.—Insurance 3608(2).

N.Y.Sup. 1963. Mere circumstance that branch bank authorized by Superintendent of Banks and Banking Board would be located in Nassau County and further circumstances that petitioner seeking annulment of authorization had its principal and many of its branch offices in Nassau County did not constitute “material facts” or “material events” under statutes which might otherwise afford basis for maintaining statutory proceeding in Nassau County rather than New York County where Superintendent and Board had principal offices. Civil Practice Act, § 1287; CPLR § 506(b).—Franklin Nat. Bank v. Superintendent of Banks, 243 N.Y.S.2d 214, 40 Misc.2d 315.—Venue 11.

N.Y.Sup. 1951. Under the statute authorizing a taxpayer to bring proceedings to review a determination of Tax Commissioner at Special Term within judicial district embracing county wherein material facts of case took place, the words “material facts” meant the underlying events which gave rise to official action by Tax Commission. Civil Practice Act, §§ 1283 et seq., 1287.—Brown v. Bates, 102 N.Y.S.2d 859.—Tax 496(1).

N.Y.Sup. 1932. If facts alleged in proposed supplemental answer do not in fact constitute defense, they are not “material facts” within statute authorizing supplemental answer. Civil Practice Act, § 245.—Dippold v. Atlantic Mills of R.I., 261 N.Y.S. 459, 146 Misc. 79.—Plead 280.

N.C. 1995. “Material facts,” testimony as to which may be impeached with extrinsic evidence, involve those matters which are pertinent to the pending inquiry.—State v. Larrimore, 456 S.E.2d 789, 340 N.C. 119.—Witm 383, 405(1).

N.D. 1984. Even if factual disputes exist between parties, summary judgment is appropriate if law is such that resolution of factual dispute will not change result; such facts in essence are not “material facts.”—Gowin v. Hazen Memorial Hosp. Ass’n, 349 N.W.2d 4, 46 A.L.R.4th 391.—Judgm 181(2).

N.D. 1984. Even when factual disputes exist between parties, summary judgment is appropriate if law is such that resolution of factual dispute will not change result; such facts, in essence, are not considered “material facts.”—Umpleby By and Through Umpleby v. State By and Through North Dakota State Game and Fish Dept., 347 N.W.2d 156.—Judgm 181(2).

Ohio App. 11 Dist. 2001. “Material facts” precluding summary judgment are those facts that might affect the outcome of the suit under the governing law of the case. Rules Civ.Proc., Rule 56.—Martin v. Grange Mut. Ins. Co., 757 N.E.2d 1251, 143 Ohio App.3d 332.—Judgm 181(2).

Pa.Super. 1948. Averments in a statement of claim that one person was duly authorized by another to make on behalf of the latter a contract, and that the contract was afterwards ratified, are statements of “material facts” and not objectionable as statements of “inferences”. 12 P.S. § 386.—

Lynch v. Wolfinger, 62 A.2d 95, 163 Pa.Super. 405.—Plead 8(2).

Pa.Cmwth. 1998. Facts which directly affect the outcome of the case, and are thus “material facts” for summary judgment purposes, are gleaned from considering the substantive law underlying the cause of action. Rules Civ.Proc., Rule 1035(b) (Repealed), 42 Pa.C.S.A.—Com., Dept. of Environmental Protection v. Delta Chemicals, Inc., 721 A.2d 411.—Judgm 181(2).

Pa.Cmwth. 1979. Complaint must go beyond giving mere notice of claim and should formulate issues by fully summarizing “material facts,” meaning ultimate facts, that is, those facts essential to support the claim. Pa.R.C.P. No. 1019(a), 42 Pa. C.S.A.—General State Authority v. Sutter Corp., 403 A.2d 1022, 44 Pa.Cmwth. 156.—Plead 48.

Tex.Crim.App. 1932. “Material facts” corroborative of accomplice are facts of criminative character or tending to connect accused with commission of offense charged. Vernon’s Ann.C.C.P. art. 718.—McInnis v. State, 54 S.W.2d 96, 122 Tex.Crim. 128.—Crim Law 511.2.

Tex.App.—Houston [1 Dist.] 2001. Stock’s classification as a penny stock and the fact the stock was not registered were “material facts,” within meaning of Texas Securities Act’s provision making a securities seller liable for an untruth or omission regarding a material fact. Vernon’s Ann.Texas Civ. St. art. 581–33, subd. A(2).—Texas Capital Securities, Inc. v. Sandefer, 58 S.W.3d 760, review denied (2 pets.).—Sec Reg 278.

Wash.App. Div. 3 1997. For purposes of requirement that trial court make findings of fact that address all ultimate facts and material issues, “material facts” are those which carry influence or effect, or are necessary, and must be found, or are essential to conclusions.—State v. Mewes, 929 P.2d 505, 84 Wash.App. 620.—Crim Law 255.4.

W.Va. 1995. “Material facts” for purposes of summary judgment are those necessary to proof of claim or defense and are determined by reference to substantive law.—Payne v. Weston, 466 S.E.2d 161, 195 W.Va. 502.—Judgm 181(2).

Wis. 1996. Evidence is relevant when it tends to make existence of material fact more probable or less probable than it would be without evidence; “material facts” are those that are of consequence to merits of litigation. W.S.A. 904.01.—Johnson by Adler v. Kokemoor, 545 N.W.2d 495, 199 Wis.2d 615.—Evid 99, 143.

Wis. 1993. “Material facts,” for purposes of admissibility of evidence, are those that are of consequence to merits of litigation.—In Interest of Michael R.B., 499 N.W.2d 641, 175 Wis.2d 713, reconsideration denied Michael R.B. v. State, 505 N.W.2d 142.—Crim Law 382.

Wis.App. 2002. “Material facts,” in summary judgment context, are those that are of consequence to the merits of the litigation. W.S.A. 802.08(2).—Hoskins v. Dodge County, 642 N.W.2d 213, 251 Wis.2d 276, 2002 WI App 40, review

denied 653 N.W.2d 889, 257 Wis.2d 117, 2002 WI 121.—Judgm 181(2).

Wyo. 1985. "Material facts" are those having legal significance, for purposes of a motion for summary judgment.—*Olson v. A.H. Robins Co., Inc.*, 696 P.2d 1294.—Judgm 181(2).

MATERIAL FACTUAL DISPUTE

S.D.N.Y. 1994. For summary judgment purposes, "material factual dispute" is one which affects outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Ganton Technologies, Inc. v. National Indus. Group Pension Plan*, 865 F.Supp. 201, affirmed 76 F.3d 462.—Fed Civ Proc 2470.1.

MATERIAL FACTUAL DISPUTES

D.Colo. 1992. "Material factual disputes," precluding summary judgment are those that might affect outcome of case under governing law. 42 U.S.C.A. § 1981; 28 U.S.C.A. § 636(b)(1)(A).—*Smith v. Colorado Interstate Gas Co.*, 794 F.Supp. 1035.—Fed Civ Proc 2470.1.

D.C. 1995. Nature of post-decision hearing to determine whether "good cause shown" warrants extension of planned unit development (PUD) order depends primarily upon whether there are any "material factual disputes," as distinguished from conflict between parties in relation to facts which have no real consequence, which would require evidentiary hearing; however, if there are no material factual disputes, there would be no need for evidentiary hearing on extension request and submission of documents, perhaps supported by oral argument, would suffice. D.C. Mun.Reg. title 11, § 2406.10.—*Hotel Tabard Inn v. District of Columbia Zoning Com'n*, 661 A.2d 150, opinion after remand 747 A.2d 1168.—Zoning 436.1.

MATERIAL FACTUAL ISSUE

Ind.App. 1 Dist. 1989. "Material factual issue" is one that bears on ultimate resolution of relevant issues. Trial Procedure Rule 56(C).—*Murphy v. Mellon Accountants Professional Corp.*, 538 N.E.2d 968, rehearing denied, and transfer denied.—Judgm 181(2).

MATERIAL FALSEHOOD

C.A.11 (Ga.) 1991. Defendant's failure to reveal his prior drug transactions with conspirator to probation officer, when information about transactions had already been provided by defendant to Drug Enforcement Administration (DEA) agents, did not constitute "material falsehood" that would warrant two-level increase in offense level under Sentencing Guidelines for obstruction of justice. U.S.S.G. § 3C1.1, 18 U.S.C.A.App.—*U.S. v. Howard*, 923 F.2d 1500.—Sent & Pun 761.

D.Del. 2001. Defendant's providing of incomplete financial statement to probation officers was a "material falsehood" warranting upward adjustment of two levels on bank theft charge for obstruction of justice, where the financial statement failed to include loan transactions defendant entered into using his mother's social security number without her

permission. U.S.S.G. § 3C1.1, 18 U.S.C.A.—*U.S. v. Robinette*, 177 F.Supp.2d 279.—Sent & Pun 761.

C.D.Ill. 1987. Failure to divulge true value of assets pledged is "material falsehood," for purposes of finding use of false financial statement exception to discharge. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Bonnett*, 73 B.R. 715, reversed 895 F.2d 1155.—Bankr 3353(12.15).

Bkrtcy.W.D.La. 1983. Under statute providing for denial of discharge to debtor for obtaining money by using materially false statement in writing, "material falsehood" is substantial or important untruth. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Biedenbarn*, 30 B.R. 342.—Bankr 3353(12.15).

Bkrtcy.N.D.Ohio 1991. Omission, concealment, or understatement of debtor's material liabilities on financial statement constitutes "material falsehood," within meaning of statutory exception to discharge. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Frugh*, 133 B.R. 870.—Bankr 3353(12.20).

MATERIAL FALSE OATH

1st Cir.BAP (Mass.) 2000. Debtor's failure to disclose interest in real property on her Chapter 7 schedules would be "material false oath," within meaning of "false oath" exception to discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4); 28 U.S.C.A. § 1746.—*In re Warner*, 247 B.R. 24.—Bankr 3284.

MATERIAL FALSE REPRESENTATIONS AMOUNTING TO FRAUD

Mo.App. 1940. Representations in an application for reinstatement of a policy which has lapsed for nonpayment of premiums, in order to be "material false representations amounting to fraud" which will void a policy, need not necessarily be concerning a matter which causes the insured's death, but may relate to facts necessary to enable the insurer to form a judgment whether it will accept the risk and at what premium.—*Chambers v. Metropolitan Life Ins. Co.*, 138 S.W.2d 29, 235 Mo.App. 884.—Insurance 2052.

MATERIAL FALSE STATEMENT

Conn. 1928. Driver might not be held unlicensed, precluding recovery for damage to truck, because he was under 18 when license was issued, "false;" "material false statement". Motor Vehicle Act, §§ 15, 18, 61.—*Salt's Textile Mfg. Co. v. Ghent*, 139 A. 694, 107 Conn. 211.—Autos 142.

Ky. 2002. Defendant's knowing adoption of another's name in connection with an affidavit of indigency was a "material false statement," within meaning of the perjury statute; defendant's false statement concerning his identity could have affected the outcome of the proceeding by influencing criminal justice system's ability to ascertain accurately defendant's criminal record, a factor relevant not only in courts' decisions as to pretrial release, but also the Commonwealth's decision whether to seek a persistent felony offender (PFO) indictment.

KRS 523.010(1).—Holbrooks v. Com., 85 S.W.3d 563, as modified.—Perj 11(3).

MATERIAL FALSE STATEMENTS TO A GRAND JURY

D.Conn. 1973. Where grand jury was investigating gambling law violation, false denials by defendant about carrying items such as notebook and large brown envelope which might contain evidence of gambling activities would constitute “material false statements to a grand jury” within meaning of statute prohibiting the wilful and knowing making of material false statements to a grand jury. Fed. Rules Crim.Proc. rule 29(a), 18 U.S.C.A.; 18 U.S.C.A. § 1623.—U.S. v. Razzaia, 370 F.Supp. 577.—Perj 11(7).

MATERIAL FALSITY

9th Cir.BAP (Nev.) 1989. For purposes of non-dischargeability, “material falsity” in financial statement can be premised upon inclusion of false information or upon omission of information about debtor’s financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Greene, 96 B.R. 279.—Bankr 3353(12.15).

Bkrty.D.Colo. 1986. “Material falsity” in financial statement, such as might render debt nondischargeable in bankruptcy, can be premised either upon inclusion of false information or upon omission of information about debtor’s financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Anzman, 73 B.R. 156.—Bankr 3353(12.15).

Bkrty.S.D.N.Y. 1992. Misrepresentation concerning ownership of assets is “material falsity” under dischargeability exception based on false financial statement. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B), (a)(2)(B)(i).—In re Boice, 149 B.R. 40.—Bankr 3353(12.15).

MATERIAL FINANCIAL INTEREST

Bkrty.D.Mass. 1997. Under Delaware law, director who was to gain more than \$2.5 million upon sale of corporate stock if leveraged buyout was approved had “material financial interest” in transaction, and could not raise business judgment rule as defense to breach of fiduciary duty claims arising out of his decision to vote to approve buyout, though benefit which director received upon sale of stock was equally shared by other stockholders; not only did director receive large profit upon sale of stock, evidence was presented that he was placed on board by major shareholder for sole purposes of seeing that shareholder’s stock was sold at profit.—In re Healthco Intern., Inc., 208 B.R. 288.—Corp 310(1).

MATERIAL FRAUD

La.App. 4 Cir. 2002. Although rent due to lessor of ice arena was allegedly miscalculated in documents presented to bank that issued letter of credit as guarantee for rental payments owed by owner of hockey team, this did not constitute “material fraud,” so as to warrant injunction preventing lessor from collecting on letter of credit. LSA-R.S.

10:5-109(a).—New Orleans Brass, L.L.C. v. Whitney Nat. Bank, 818 So.2d 1057, 2001-2308 (La.App. 4 Cir. 5/15/02).—Banks 191.30.

La.App. 4 Cir. 2002. Alleged deficiency of seats in ice arena did not amount to “material fraud,” so as to warrant injunction preventing lessor of arena from collecting on letter of credit issued as guarantee for rental payments owed by owner of hockey team, since availability of seats was not a problem during hockey season. LSA-R.S. 10:5-109(a).—New Orleans Brass, L.L.C. v. Whitney Nat. Bank, 818 So.2d 1057, 2001-2308 (La.App. 4 Cir. 5/15/02).—Banks 191.30.

La.App. 4 Cir. 2002. Alleged unfinished state of ice arena did not amount to “material fraud,” so as to warrant injunction preventing lessor of arena from collecting on letter of credit issued as guarantee for rental payments owed by owner of hockey team, since arena was nevertheless functional and hosted an entire season of ice hockey. LSA-R.S. 10:5-109(a).—New Orleans Brass, L.L.C. v. Whitney Nat. Bank, 818 So.2d 1057, 2001-2308 (La.App. 4 Cir. 5/15/02).—Banks 191.30.

Md. 1950. The fraud relied upon as foundation of action for deceit must be material, a “material fraud” being fraud without which transaction complained of would not have been made, and fraudulent statement must be statement of an alleged existing fact, and not merely of some future or contingent event, or expression of opinion as to subject of statement.—Babb v. Bolyard, 72 A.2d 13, 194 Md. 603.—Fraud 11(1), 18.

Mich. 1964. Electors challenging validity of annexation election had to establish the commission of material fraud or error at the election, and by “material fraud” is meant fraud which might have affected the outcome of the election. Comp.Laws 1948, § 638.28.—St. Joseph Tp. v. City of St. Joseph, 127 N.W.2d 858, 373 Mich. 1.—Mun Corp 33(9).

Ohio 2002. “Material fraud” under Uniform Commercial Code (UCC) provision permitting injunctive relief against honoring presentation of a letter of credit in case of material fraud means fraud that has so vitiated the entire transaction that the legitimate purposes of the independence of the issuer’s obligation can no longer be served. R.C. § 1305.08(B).—Mid-America Tire, Inc. v. PTZ Trading Ltd., 768 N.E.2d 619, 95 Ohio St.3d 367, 2002-Ohio-2427, reconsideration denied 772 N.E.2d 126, 96 Ohio St.3d 1455, 2002-Ohio-3819.—Banks 191.30.

MATERIAL FURNISHED

C.A.5 (Tex.) 1955. Hoisting machinery which was actually installed and became part of dam was “material furnished”, within purview of statute providing for recovery of attorney’s fees by person having valid claim for material furnished. Vernon’s Ann.Civ.St.Tex. art. 2226.—U.S. for Use and Benefit of Caldwell Foundry & Mach. Co. v. Texas Const. Co., 237 F.2d 705.—Costs 194.36.

E.D.Tex. 1962. Crude oil which was sold to buyer pursuant to contract and for which seller sought to recover price was "material furnished" within statute authorizing persons having valid claim for material furnished to recover reasonable amount as attorney's fees if buyer does not pay within 30 days after presentation of account. *Vernon's Ann.Civ.St.Tex. art. 2226.—Lone Star Producing Co. v. Gulf Oil Corp.*, 208 F.Supp. 85, reversed 322 F.2d 28.—Costs 194.36.

Ark. 1933. Coal sold to levee construction contractor, using it in operation of steam shovels and dredges, held not "material furnished" within contractor's bond. *Crawford & Moses' Dig.* §§ 6913, 6914.—*Southern Coal Co. v. McWilliams Co.*, 55 S.W.2d 932, 186 Ark. 775.—Levees 16.

La. 1932. "Material furnished," for which contractor's surety is liable under statute, does not include money advanced to enable contractor to buy materials. *LSA-R.S. 38:2241.—Smith v. Smith*, 142 So. 132, 174 La. 937.—*Mech Liens* 315.

La. 1931. Act No. 224 of 1918, s 1, requires political subdivision contracting for improvement to require bond of contractor to pay for labor performed or material furnished, and section 2 makes subdivision liable for payments made for labor done or material furnished after timely recordation and filing of sworn statement of claim, but expression "material furnished" does not include money advanced.—*Hanson v. Liberty Const. Co.*, 134 So. 98, 172 La. 298.—*Mun Corp* 348, 376.

Mich. 1927. Lumber furnished contractor constructing waterworks for use in making concrete forms held "material furnished" for which contractor's surety was liable. *Comp.Laws 1915, § 14829.—People v. U.S. Fidelity & Deposit Co.*, 213 N.W. 68, 238 Mich. 326.—*Mun Corp* 347(2).

Ohio App. 1 Dist. 1936. Coal furnished to highway contractor, and used, to heat asphalt to make it possible to spread asphalt on highway as top surface, is "material furnished," within coverage of highway contractor's statutory bond, covering materials furnished in "carrying forward, performing or completing * * * contract," in view of provision of analogous mechanic's lien law for liberal construction, notwithstanding mechanic's lien law specifically makes fuel lienable. *Gen.Code, §§ 2365-1, 2365-2, 2365-4, 8310, 8323-8.—Lingler v. Andrews*, 10 N.E.2d 1021, 56 Ohio App. 487, 9 O.O. 34.—*High* 113(5).

Pa.Super. 1939. "Appellant's contention that materials which are the subject of a suit must in every instance have actually entered into the physical structure of the work involved, cannot be sustained. Under a bond like the one before us, it is sufficient if the materials are of a character contemplated by the original contract, were furnished in good faith for the purpose of incorporation into the work covered by that contract, and were suitable for the object in view. This determination is not affected by subsequent events such as those in the present case, where the materials were lawfully seized by the city, delivered to the new contractor in strict compliance with the municipality's rights under the

original contract, and will, as appellant admits, presumably be used in the structure contemplated by that contract." He then discussed the "well-established doctrine" that the words "material furnished" for any structure, work or improvement, in contracts of that kind, apply only to such materials as enter into and become component parts of the structure, work or improvement contemplated; and said that the point of the decisions establishing that doctrine "is not to be found in the degree of physical incorporation which is essential to a recovery for materials admittedly within the terms of the bond, but rather in the character of the materials and the purpose for which they were furnished." A reference to the word "material" as used in the contracts between the school district and the contractor, as above recited, on which contracts, as we have shown, the liability of the surety must be based, satisfied us that it was there used to denote materials which were designed to enter into and become part of the finished work, such as white lead, color, linseed oil, etc., whether they actually became such or were rejected as defectively or unsuitably mixed or applied, or materials that would be consumed on such work, whether or not they became a component part of the completed work, and was not intended to afford protection to persons who sold the contractor equipment, appliances or apparatus, which would not enter into or be consumed in the work but, at its completion, would be taken away by the contractor, intact and entire, and used on other jobs.—*School Dist. of Philadelphia, to Use of Crowe v. B. A. Shrages Co.*, 4 A.2d 558, 134 Pa.Super. 533, opinion adopted 9 A.2d 900, 336 Pa. 433.

Tex. 1972. Water control gates built by plaintiff and installed into dam were "material furnished" to prime contractor of the dam; thus, plaintiff, who was successful in his suit against prime contractor to recover balance due on contract, was entitled to recover attorneys' fees. *Vernon's Ann.Civ.St. art. 2226.—Pacific Coast Engineering Co. v. Trinity Const. Co.*, 481 S.W.2d 406.—Costs 194.32.

Tex. 1965. Gas producer who as principal delivered gas to processor as agent was not entitled to recover attorney fees in action for amount allegedly due under processing contract under "material furnished" provision of statute. *Vernon's Ann.Civ.St. art. 2226.—Champlin Oil & Refining Co. v. Chastain*, 403 S.W.2d 376.—Costs 194.32.

Tex.Civ.App.—Austin 1967. Ready mix concrete supplied by concrete company to construction company for highway paving job was "material furnished" within statute permitting recovery of attorney fees in action based on contract for "material furnished". *Vernon's Ann.Civ.St. art. 2226.—Page v. Superior Stone Products, Inc.*, 412 S.W.2d 660, ref. n.r.e.—Costs 194.32.

Tex.Civ.App.—Austin 1953. Under statute providing in part that persons having valid claim for "material furnished" may recover a reasonable amount as attorney's fees, the term "material furnished" did not embrace a plow or harrow, and did not authorize attorney's fees in suit upon verified account for purchase price of such farm imple-

ments. Vernon's Ann.Civ.St. art. 2226.—Davenport v. Harry Payne Motors, Inc., 256 S.W.2d 245.—Costs 194.36.

Tex.Civ.App.—Austin 1953. Statute providing in part that persons having valid claim for material furnished may recover a reasonable amount as attorney's fees is a penalty statute, and must be strictly construed, and if there is reasonable doubt as to whether statute includes ordinary farm implements within meaning of term "material furnished" that doubt should be resolved against imposition of penalty. Vernon's Ann.Civ.St. art. 2226.—Davenport v. Harry Payne Motors, Inc., 256 S.W.2d 245.—Costs 194.36.

Tex.Civ.App.—Texarkana 1963. Pickup truck and trailer bought at auction were not "material furnished" within statute authorizing attorney fee where claim for "material furnished" is not paid within 30 days after claim has been presented. Vernon's Ann.Civ.St. art. 2226.—Anderson v. King, 370 S.W.2d 775.—Costs 194.36.

Tex.Civ.App.—Houston 1962. Though attorney fees were recoverable under statute with respect to claim for labor and material furnished, equipment rented was not "material furnished" within statute and attorney fees were not recoverable with respect to claim therefor. Vernon's Ann.Civ.St. art. 2226.—King Const. Co. v. Flores, 359 S.W.2d 919, ref. n.r.e.—Mech Liens 310(3).

MATERIAL FURNISHED IN PROSECUTION OF THE WORK

Pa.Super. 1939. Ladders, trestles, jacks, flanks, etc., sold to a painter who had contracted to paint school auditoriums for school district, were not "material furnished in prosecution of the work" within contractor's contract and bond, so as to render contractor's surety liable to seller upon contractor's default in paying for such articles. 24 P.S. § 763.—School Dist. of Philadelphia, to Use of Crowe v. B. A. Shrages Co., 4 A.2d 558, 134 Pa.Super. 533, opinion adopted 9 A.2d 900, 336 Pa. 433.

MATERIAL HINDRANCE

C.A.8 (Mo.) 1998. Even if defendants' burning of farmhouse in which methamphetamine laboratory was located could be considered contemporaneous with their arrest, total destruction of the farmhouse and substantial amount of potential evidence constituted "material hindrance" to investigation, prosecution, or sentencing, within meaning of Sentencing Guidelines' obstruction of justice enhancement. U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Coleman, 148 F.3d 897, certiorari denied 119 S.Ct. 228, 525 U.S. 899, 142 L.Ed.2d 188, appeal after remand 164 F.3d 1181.—Sent & Pun 761.

MATERIAL IMBALANCE

C.A.Fed. 1990. "Material imbalance" which requires that bid on public contract be rejected occurs if award fails to represent lowest ultimate cost to Government or imbalance is such that it will adversely affect integrity of competitive bidding sys-

tem.—SMS Data Products Group, Inc. v. U.S., 900 F.2d 1553.—U S 64.40(1).

MATERIAL INCOME-PRODUCING FACTOR

C.A.7 1984. Capital was not employed as "material income-producing factor" in business of taxpayer who was sole proprietor of ornamental wrought iron business, in which each railing was individually designed, fabricated and installed, as iron rods which taxpayer worked into finished iron railings were almost useless without taxpayer's skills; thus taxpayer could treat all of his personal service income as subject to 50% maximum marginal tax rate. 26 U.S.C.(1976 Ed.) § 1348.—Van Kalker v. C.I.R., 804 F.2d 967.—Int Rev 3551.

C.C.A.8 1948. The capital of a flying school, including airplanes, airport, and facilities, was a "material income-producing factor" within terms of statutory definition of "personal service corporation", and hence corporation operating the school was not exempt from excess profits tax as a "personal service corporation". 26 U.S.C.A. Excess Profits Taxes, § 725(a).—Graham Flying Service v. C.I.R., 167 F.2d 91, certiorari denied 69 S.Ct. 38, 335 U.S. 817, 93 L.Ed. 372.—Int Rev 4135.

C.C.A.8 1933. No definite percentage ratio of gross income can be taken as point at which capital becomes "material income-producing factor," within definition of personal service corporation, but way in which capital makes its contribution is important. Revenue Act 1918, § 200, 40 Stat. 1058.—Edward P. Allison Co. v. Commissioner of Internal Revenue, 63 F.2d 553.—Int Rev 3854.

C.C.A.8 1933. Small percentage of gross income directly attributable to capital sources may render capital "material income-producing factor" within definition of personal service corporation, where use of capital gives character to sizable portion of operations of corporation. Revenue Act 1918, § 200, 40 Stat. 1058.—Edward P. Allison Co. v. Commissioner of Internal Revenue, 63 F.2d 553.—Int Rev 3854.

C.C.A.8 1933. Corporation largely engaged in contracting business, which for taxable years constantly employed capital in large amounts to finance construction, employed capital as "material income-producing factor," precluding classification as "personal service corporation," even if gross income attributable to capital for taxable years was only from 11 and 20 per cent. of entire income. Revenue Act 1918, §§ 200, 303, 40 Stat. 1058, 1089.—Edward P. Allison Co. v. Commissioner of Internal Revenue, 63 F.2d 553.—Int Rev 3854.

C.C.A.8 1930. Personal service corporation—Capital— "Material income-producing factor." Borrowed capital of corporation engaged in making loans for customers held "material income-producing factor," within law excepting personal service corporation from taxation (Revenue Acts 1918, 1921, Sec. 200). Revenue Acts 1918, 1921, Sec. 200 (40 Stat. 1058, 42 Stat. 227), excepting public service corporation from taxation, defined the term "personal corporation" as corporation whose income is ascribed primarily to activities of the principal

owners or stockholders and in which capital is not material income-producing factor.—*Franciscus Realty Co. v. Commissioner of Internal Revenue*, 39 F.2d 583.—Int Rev 3856.

C.C.A.8 1930. Borrowed capital of corporation engaged in making loans for customers held “material income-producing factor,” within law excepting personal service corporation from taxation. Revenue Acts 1918, 1921, § 200, 40 Stat. 1058, 42 Stat. 227.—*Franciscus Realty Co. v. Commissioner of Internal Revenue*, 39 F.2d 583.—Int Rev 3856.

MATERIAL INCOME-PRODUCING FACTORS

D.Mont. 1927. Brokerage corporation, which paid \$30,000 of its stock for good will and borrowed money for use of business, held not entitled to exemption from excess profits tax; ‘personal service corporation having nominal capital; “material income-producing factors” (Revenue Act 1918, Secs. 200, 231, 301, 304, 326 (Comp. St. Secs. 6336 1/8a, 6336 1/8o, 6336 7/16aa, 6336 7/16c, 6336 7/16 i)). General brokerage corporation, which had paid \$30,000 in paid-up capital stock for its predecessor’s good will, and had borrowed money sufficient to enable it to make purchases as principal in an amount of \$143,593, with a gross profit of \$5,453, or 13 per cent. of its total gross profit for the year, held not exempt from excess profits tax as ‘personal service corporation having a nominal capital’ under Revenue Act 1918, Secs. 200, 231, 301, 304, 326 (Comp. St. Secs. 6336 1/8a, 6336 1/8o, 6336 7/16aa, 6336 7/16c, 6336 7/16i), since both its ‘invested capital,’ consisting of good will, and borrowed money were active in the business, and were “material income-producing factors.”—*Geo. L. Tracy & Co. v. Rasmusson*, 26 F.2d 139.—Int Rev 4133.

MATERIAL INDUCEMENT

Tex.Com.App. 1936. Test as to whether representations made by broker to procure execution of contract constituted “material inducement” was whether contract would have been signed without such representations having been made.—*H. W. Broaddus Co. v. Binkley*, 88 S.W.2d 1040, 126 Tex. 374.—Brok 65(1).

Tex.Com.App. 1936. Although plaintiff failed to except to courts definition of “material inducement,” objection to definition and request to submit issue as to whether contract would have been signed without false representations sufficiently called court’s attention to fact that major issue had not been submitted.—*H. W. Broaddus Co. v. Binkley*, 88 S.W.2d 1040, 126 Tex. 374.—Trial 351.2(6).

Tex.Civ.App.—El Paso 1936. In purchaser’s suit to rescind land contract for false representations, submission of special issue as to whether such representations were “material inducements” to purchaser to make purchase without defining “material inducement,” a term having a legal meaning as used in issue, held reversible error. Rev.St.1925, art. 2189.—*Porter v. Robinson*, 93 S.W.2d 477.—Trial 219.

Tex.Civ.App.—El Paso 1932. Special issue whether false representations concerning tenants’

financial responsibility were “material inducement” to making of contract for exchange held properly submitted. Jury were asked whether they found from a preponderance of evidence that false representations, if made, were a “material inducement” to the contract of exchange, and were told that the question was whether the representations materially induced the contract and that they need not have been the sole inducement.—*H.W. Broaddus Co. v. Binkley*, 54 S.W.2d 586, reversed 88 S.W.2d 1040, 126 Tex. 374.

MATERIAL INDUCEMENTS

Tex.Civ.App.—El Paso 1936. In purchaser’s suit to rescind land contract for false representations, submission of special issue as to whether such representations were “material inducements” to purchaser to make purchase without defining “material inducement,” a term having a legal meaning as used in issue, held reversible error. Rev.St.1925, art. 2189.—*Porter v. Robinson*, 93 S.W.2d 477.—Trial 219.

MATERIAL INFORMATION

C.A.7 (Ill.) 1991. False information supplied by defendant, in referring at various times to his being employed at brokerage firm as trainee just prior to his arrest for bank fraud, when in fact he had at most embarked upon training program which might have led to his employment as sales representative, was not “material information,” thus precluding addition of two points to offense level under sentencing guidelines for “obstruction of justice.” U.S.S.G. § 3C1.1, comment. (nn.3–5), 18 U.S.C.A.App.—*U.S. v. DeFelippis*, 950 F.2d 444.—Sent & Pun 761.

C.A.7 (Ill.) 1990. Fact that Magistrate had previously denied warrant application based on same affidavit subsequently submitted by agent to Chief Magistrate was not “material information” within Rule of *Franks*, prohibiting the omission of material information from a warrant application; even had fact been included in information submitted to Chief Magistrate, affidavit would have still been sufficient to show probable cause. U.S.C.A. Const. Amend. 4.—*U.S. v. Pace*, 898 F.2d 1218, certiorari denied *Cialoni v. U.S.*, 110 S.Ct. 3286, 497 U.S. 1030, 111 L.Ed.2d 795, certiorari denied *Savides v. U.S.*, 111 S.Ct. 210, 498 U.S. 878, 112 L.Ed.2d 170, on remand 758 F.Supp. 466.—Searches 112.

C.A.3 (N.J.) 2000. “Material information,” for purposes of securities fraud claim, is information that would be important to a reasonable investor in making his or her investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5.—*Oran v. Stafford*, 226 F.3d 275.—Sec Reg 60.28(11), 60.46.

C.A.5 (Tex.) 1995. “Material information,” for purposes of statute prohibiting making of false entry concerning material information in book, report or statement of savings and loan institution, is that which has capacity to impair or pervert functioning of institution. 18 U.S.C.A. § 1006.—*U.S. v. Parks*, 68 F.3d 860, certiorari denied 116 S.Ct. 825,

516 U.S. 1098, 133 L.Ed.2d 768, certiorari denied *O'Neal v. U.S.*, 116 S.Ct. 957, 516 U.S. 1133, 133 L.Ed.2d 879, certiorari denied *Moss v. U.S.*, 116 S.Ct. 1028, 516 U.S. 1151, 134 L.Ed.2d 106.—*B & L Assoc* 23(8).

D.D.C. 1975. "Material information," within meaning of Securities and Exchange Commission rule barring use of manipulative and deceptive devices in securities transactions, is defined as that to which reasonable man would attach importance in determining his choice of action in transaction in question. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Securities and Exchange Commission v. General Refractories Co.*, 400 F.Supp. 1248.—Sec Reg 60.28(11).

D.Mass. 1997. In order to obtain suppression of communications intercepted by electronic surveillance, based on omissions from supporting application or affidavit, defendant must show by preponderance of evidence that facts were omitted with intent to make, or in reckless disregard of whether they thereby made, application and affidavit misleading, and that such omitted facts were material; information which reasonably might have prompted district judge being asked to issue the warrant to have denied request is "material information", but information is not material if warrant would necessarily, nevertheless have issued if omitted information had been disclosed.—*U.S. v. Salemme*, 978 F.Supp. 343.—Crim Law 394.3, 394.6(4).

D.Mass. 1991. "Material information," for purposes of motion to suppress evidence obtained through electronic surveillance on ground that affidavit in support of warrant to conduct electronic surveillance omitted material information, means information which reasonably might have prompted district judge being asked to issue warrant to have denied request; if reasonable judge either might or might not have authorized requested electronic surveillance if fully informed, information at issue is material, and its omission requires suppression, but if reasonable judge would have authorized electronic surveillance anyway, suppression is not appropriate. 18 U.S.C.A. § 2518(11)(a).—*U.S. v. Ferrara*, 771 F.Supp. 1266.—Crim Law 394.3.

D.N.J. 2002. In the securities fraud context, "material information" is defined as information that would be important to a reasonable investor in making his or her investment decisions. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Nappier v. Pricewaterhouse Coopers LLP*, 227 F.Supp.2d 263.—Sec Reg 60.46.

D.N.J. 2002. "Material information," in the context of a securities fraud case under § 10(b)(5) of the Securities Exchange Act and Rule 10b-5, is information that would be important to a reasonable investor in making his or her investment decisions; there must be a substantial likelihood that disclosure of the information would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17

C.F.R. § 240.10b-5.—*In re Lucent Technologies, Inc. Securities Litigation*, 217 F.Supp.2d 529.—Sec Reg 60.28(11).

D.N.J. 2000. For purposes of establishing a securities fraud action under Rule 10b-5, "material information" is information that would be important to a reasonable investor in making his or her investment decision. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*In re Milestone Scientific Securities Litigation*, 103 F.Supp.2d 425.—Sec Reg 60.28(11), 60.46.

D.N.J. 1996. Information is "material information," for purposes of federal securities laws, if there is substantial likelihood that, under all the circumstances, information would have assumed actual significance in deliberations of reasonable shareholders. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Weiner v. Quaker Oats Co.*, 928 F.Supp. 1372, reversed 129 F.3d 310.—Sec Reg 60.46.

D.N.J. 1996. Omitted information is "material information," within meaning of securities laws, if there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*Weiner v. Quaker Oats Co.*, 928 F.Supp. 1372, reversed 129 F.3d 310.—Sec Reg 60.28(11).

S.D.N.Y. 1986. Knowledge of an impending tender offer that has not previously been announced publicly is "material information" within meaning of section 10(b) and Rule 10b-5. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—*S.E.C. v. Tome*, 638 F.Supp. 596.—Sec Reg 60.28(13).

S.D.N.Y. 1968. President of corporation, the stock of which was sold in alleged violation of securities laws, was an "insider", and as such he had the obligation to disclose "material information" before using it to his own advantage by purchasing or selling corporation's stock, the term "material information" encompassing those facts which in reasonable objective contemplation might affect the value of the corporation's stock or securities. Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.; Securities Exchange Act of 1934, § 1 et seq., 15 U.S.C.A. § 78a et seq.—*Securities and Exchange Commission v. Shattuck Denn Mining Corp.*, 297 F.Supp. 470.—Corp 316(3); Sec Reg 53.15.

S.D.N.Y. 1966. "Material information" within statute and Securities and Exchange Commission rule, providing that corporate insider cannot use material information to his own advantage by purchasing stock or calls on stock of his company is information which in reasonable and objective contemplation might affect value of corporation's stock or securities; it is information which, if known would clearly affect investment judgment, or which directly bears on intrinsic value of company's stock;

material information need not be limited to information which is translatable into earnings; the test of materiality must be a conservative one. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Securities and Exchange Commission v. Texas Gulf Sulphur Co., 258 F.Supp. 262, affirmed in part, reversed in part 401 F.2d 833, 2 A.L.R. Fed. 190, certiorari denied *Kline v. Securities and Exchange Commission*, 89 S.Ct. 1454, 394 U.S. 976, 22 L.Ed.2d 756, certiorari denied *Coates v. Securities and Exchange Commission*, 89 S.Ct. 1454, 394 U.S. 976, 22 L.Ed.2d 756, on remand 312 F.Supp. 77, affirmed in part, reversed in part 446 F.2d 1301, on remand 331 F.Supp. 671, certiorari denied *Texas Gulf Sulphu—Corp* 187, 316(3); Sec Reg 60.28(11).

E.D.Pa. 1996. Differing interpretation of reexamination statute that patentee urged before district court was not “material information” that patentee was required to disclose to Patent and Trademark Office (PTO), so that patentee’s failure to disclose such information was not inequitable conduct; “material information” did not include legal argument. 35 U.S.C.A. § 305; 37 C.F.R. § 1.555(a), (b)(2).—*Environ Products, Inc. v. Total Containment, Inc.*, 951 F.Supp. 57, reconsideration denied.—Pat 97.

W.D.Pa. 1985. Rule 10b-5 prohibiting the use, in connection with purchase or sale of any security, any manipulative or deceptive device with intent to defraud or deceive imposes a duty on corporate insiders to disclose, prior to trading, material information; “material information” consists of those facts that a reasonable investor might have considered as important in making a decision to buy or sell. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Paul v. Berkman*, 620 F.Supp. 638.—Sec Reg 60.28(4), 60.28(11).

E.D.Wis. 2000. “Material information,” the omission of which can render patent unenforceable, includes any information that reasonable examiner would substantially likely consider important in deciding whether to allow application to issue as patent.—*Schreiber Foods, Inc. v. Beatrice Cheese, Inc.*, 92 F.Supp.2d 857, affirmed in part, reversed in part 31 Fed.Appx. 727, rehearing and rehearing denied.—Pat 97.

Cal. 1980. “Material information” which must be disclosed by physician to his patient is that which physician knows or should know would be regarded as significant by reasonable person in patient’s position when deciding to accept or reject recommended medical procedure; to be material, a fact must also be one which is not commonly appreciated.—*Truman v. Thomas*, 611 P.2d 902, 165 Cal. Rptr. 308, 27 Cal.3d 285.—Health 906.

Colo. 1997. Breach of fiduciary duty occurs when broker, as agent, conceals from seller, as principal, “material information,” i.e., information that bears upon transaction in question; agent is thus required to disclose to principal any facts which might reasonably affect principal’s decision.—*Olsen v. Vail Associates Real Estate, Inc.*, 935 P.2d 975.—Brok 34.

Kan. 1991. Mechanic’s opinion that vehicle fire had been electrical in nature was “material information” and, thus, manufacturer’s and dealer’s failure to disclose that information was “deceptive act” within meaning of Consumer Protection Act when consumers were seeking to have vehicle repaired under service contract, but were told that cause of fire was undetermined, so that payment for repairs would have to be made under consumers’ automobile policy. K.S.A. 50-626(b)(3).—*Farrell v. General Motors Corp.*, 815 P.2d 538, 249 Kan. 231.—Cons Prot 9.

Mich.App. 1982. Party seeking to enforce waiver of a party’s right to access to the court system must show that he was aware of all material information about the arbitration procedure; “material information” is information that reasonable person would consider important in deciding whether or not to sign an arbitration agreement.—*Moore v. Fragatos*, 321 N.W.2d 781, 116 Mich.App. 179.—Arbit 23.7.

Mich.App. 1977. Within statute requiring that offeror in connection with takeover offer provide “material information,” such is anything of which average prudent investor ought reasonably to be informed before deciding whether to buy, sell or hold affected security and if reasonable investor would consider particular item of information important in making such decision, that item is “material” per se. M.C.L.A. §§ 451.901-451.917, 451.908, 451-908(1)(c, h); GCR 1963, 711.2, 711.4.—*Gerber Products Co. v. Anderson, Clayton & Co.*, 256 N.W.2d 754, 76 Mich.App. 410.—Sec Reg 272.

Neb. 1988. A physician is under a duty to disclose material information to his patient, and failure to do so results in fraudulent concealment; “material information” includes the cause of death of a patient.—*Muller v. Thaut*, 430 N.W.2d 884, 230 Neb. 244.—Fraud 17, 18.

Or. 1998. In the context of disciplinary rule prohibiting attorney’s misrepresentation of material information, “material information” is information that, if it had been known by the court or other decision-maker, would or could have influenced the decision-making process significantly. Code of Prof.Resp., DR 1-102(A)(3).—*In re Conduct of Gustafson*, 968 P.2d 367, 327 Or. 636.—Atty & C 42.

S.D. 1981. “Material information” includes that which influences principal in accepting or rejecting offer or making counteroffer.—*Hurney v. Lock*, 308 N.W.2d 764.—Brok 19.

MATERIAL INGREDIENT

Ark. 1948. Time was not a “material ingredient” of the offense of operating a gambling house, within statute making immaterial the statement in an indictment that an offense was committed at a particular time, except when time is a “material ingredient” in the offense. Pope’s Dig. § 3841.—*Buchanan v. State*, 218 S.W.2d 700, 214 Ark. 835.—Ind & Inf 87(9).

Or.App. 1970. Time was not “material ingredient” of offense of failure to support child within statute specifying that precise time at which crime was committed need not be stated in indictment except where time is material ingredient of crime. ORS 132.610, 167.605.—*State v. Combs*, 473 P.2d 672, 3 Or.App. 260.—*Ind & Inf* 87(9).

MATERIAL INJURY

D.N.J. 1943. Where electric lighting fixtures installed by tenant could not be removed without injury to lighting system as a unit, such removal would be a “material injury” to building within state court rule relating to fixtures, and therefore tenant could not remove such fixtures even if tenant was authorized to remove fixtures readily removable without material injury to building.—*In re Old*, 57 F.Supp. 359, affirmed *Matter of Herold*, 145 F.2d 236.—*Fixt* 14.

CIT 1985. International Trade Commission is not required to consider dumping margins in reaching decision on whether domestic industry is suffering from, or threatened with, “material injury” by reason of imports, within meaning of antidumping statute. Tariff Act of 1930, §§ 735(b)(1), 771(7)(A), as amended, 19 U.S.C.A. §§ 1673d(b)(1), 1677(7)(A).—*Maine Potato Council v. U.S.*, 613 F.Supp. 1237, appeal after remand 617 F.Supp. 1088.—*Cust Dut* 21.

Cal. 1886. Chancellor Kent, in his *Commentaries*, 3 Comm. 429, states that streams of water are intended for the use and comfort of man; and it would be unreasonable, etc., to debar any riparian proprietor from the application of water for domestic, agricultural, or manufacturing purposes, provided the use be made under the limitation that he do no material injury to his neighbor below him, who has an equal right to the subsequent use of the same water. *Held*, that the words “material injury,” as so used, ought not to be taken literally, unless the words be impressed with a signification, the equivalent of a substantial deprivation of capacity in a lower proprietor to employ the water for useful purposes. The adjective “material” is prefixed to “injury,” and the words seem to have reference to the enjoyment of the use by the inferior owner, not to his mere abstract right to the use as against others than riparian owners, and to intimate that he cannot complain of a reasonable exercise of the use by another who possesses the general right in common with himself. The employment by Kent of the words “material injury” implies that every diminution is not an injury, and it excludes, where water is reasonably used above for irrigation, mere sentiment, or the consideration of a diminution from the natural flow so far merely as such flow pleases the eye or gratifies a taste for the beautiful.—*Lux v. Haggin*, 10 P. 674, 69 Cal. 255.

Ky. 1964. Municipal taxation and regulation do not constitute “material injury” within statute to effect that, if majority of voters in territory to be annexed have remonstrated against annexation and annexation will cause material injury to owners of realty in area to be annexed, annexation shall be denied, but are burdens to be considered in relation

to benefits. KRS 81.220.—*City of Hickman, Inc. v. Choate*, 379 S.W.2d 238.—*Mun Corp* 29(3).

Ky. 1964. Municipal taxation and regulation do not constitute “material injury” within annexation statute but are burdens to be considered in relation to benefits. KRS 81.220.—*McClellan v. Central City*, 375 S.W.2d 823.—*Mun Corp* 29(3).

Ky. 1962. The “material injury” which protestants must show to avoid proposed annexation to fourth-class city is the clear and obvious imposition of manifest and substantial burdens; burdens are considered as relative to benefits and there must be a substantial excess of burdens over benefits to defeat annexation. KRS 81.220.—*City of Greenville v. Gossett*, 355 S.W.2d 311.—*Mun Corp* 29(3).

Ky. 1920. In a proceeding by a city of the fourth class for the annexation of territory, wherein the property owners in the district sought to be annexed remonstrated, that they would be subject to municipal taxation and liable for the cost of improving streets and building sidewalks did not constitute a “material injury” within Ky.St. § 3483, which provides that, if a majority of the resident voters or owners remonstrate “and” if the change will cause material injury, the annexation shall be denied.—*City of Georgetown v. Pullen*, 220 S.W. 733, 187 Ky. 697.—*Mun Corp* 29(3).

N.J. 1996. Billboard company’s billboards could be removed without “material injury,” such that they were exempt from taxation as real property, though billboards could not be wholly reused as single replacement or completely reassembled piece by piece on removal, where approximately 80% of billboard’s support structure was salvageable on removal, and years of wear, rather than disassembling billboards, rendered wood parts of billboards unusable. N.J.S.A. 54:4-1.—*R.C. Maxwell Co. v. Galloway Tp.*, 679 A.2d 141, 145 N.J. 547.—*Tax* 65.

N.J. 1996. In determining whether personal property sustains “material injury” when it is removed from property from which it was attached, so as to be exempt from real property taxation, there is no requirement that disassembled parts be wholly reassembled. N.J.S.A. 54:4-1.—*R.C. Maxwell Co. v. Galloway Tp.*, 679 A.2d 141, 145 N.J. 547.—*Tax* 65.

N.J.Tax 2002. “Material injury,” for purposes of determining whether personal property sought to be taxed could be removed without material injury to itself or to real property, is not a relative term based upon the size of the real property; the time and effort required to make repairs, following removal of the personal property, must be viewed in itself and not in relation to the size of the overall structure. N.J.S.A. 54:4-1, subd. a; N.J.A.C. 18:12-10.1.—*General Motors Corp. v. City of Linden*, 20 N.J.Tax 242.—*Tax* 65.

N.J.Tax 2002. Paint booths and ovens, as well as additional booths, at taxpayer’s automobile assembly plant could be removed without “material injury” to the real property or to themselves, for purposes of determining whether booths and ovens were taxable real property; booths and ovens could

be disassembled on site, removal of disassembled sections could require opening in wall of building, but removable panels in the building accommodated installation and removal of large equipment, and, after removal, the booths and ovens could be reassembled elsewhere. N.J.S.A. 54:4-1, subd. a.—General Motors Corp. v. City of Linden, 20 N.J.Tax 242.—Tax 65.

N.J.Tax 2002. Conveyor systems at taxpayer's automobile assembly plant could be removed without "material injury" to themselves or the real estate, for purposes of determining whether the conveyor systems were taxable as real property under statutory "a test"; disassembly process involved use of torches to separate conveyor sections, remove bolts from clamps, remove bolts from header steel and cut lag bolts, conveyor sections were suitable for re-welding and re-installation in a new location, and removal of floor-mounted conveyor systems involved simply unbolting them or the support steel. N.J.S.A. 54:4-1, subd. a.—General Motors Corp. v. City of Linden, 20 N.J.Tax 242.—Tax 65.

N.J.Tax 2002. Removal of flat top conveyors at taxpayer's automobile assembly plant would result in "material injury" to the real estate, and therefore the flat top conveyors were taxable as real property under statutory "a test"; removal of flat top conveyor left empty pit, and permanent repair of the pit required reconstruction of the floor in area of the pit. N.J.S.A. 54:4-1, subd. a.—General Motors Corp. v. City of Linden, 20 N.J.Tax 242.—Tax 65.

N.J.Tax 2002. Automatic guided vehicle (AGV), which was type of conveying device used at taxpayer's automobile assembly plant, was not taxable as real property under statutory "a test"; removal of AGV wires merely required breaking up concrete and refilling the small recess or slot and, thus, did not cause "material injury" to the real estate, and there was no showing that removal would cause material injury to the wires or that wires were ordinarily intended to be affixed permanently. N.J.S.A. 54:4-1, subd. a.—General Motors Corp. v. City of Linden, 20 N.J.Tax 242.—Tax 65.

N.J.Tax 2002. Automated storage and retrieval facilities used at taxpayer's automobile assembly plant were taxable as real property under statutory "a test," although facilities could be removed without material injury to themselves; removal of the facilities would cause "material injury" to the real estate, in that it would require major repair work in constructing walls to plant building, and storage facilities of the same size and nature were ordinarily intended to be affixed permanently, given the lack of evidence that such facilities were disassembled and relocated. N.J.S.A. 54:4-1, subd. a.—General Motors Corp. v. City of Linden, 20 N.J.Tax 242.—Tax 65.

MATERIAL INJURY TO FREEHOLD

C.C.A.3 (Pa.) 1939. As applied to thirty-story office building, words "freehold" and "realty" in provision of Pennsylvania Conditional Sales Act that seller's reservation of property in goods, so

attached to realty as not to be severable without "material injury to freehold," shall be void as against owner or prior encumbrancer not assenting thereto, embrace building as complete going or operating plant, and words "material injury to the freehold" mean injury to building as operating plant, not merely to physical construction thereof. 69 P.S. § 404, second subd.—Medical Tower Corp. v. Otis Elevator Co., 104 F.2d 133.—Fixt 9.

Ind.App. 1943. The doctrine that chattel affixed to realty, so that its severance will prevent use of structure for purpose to which adapted, is not severable without "material injury to freehold," is inapplicable to furnace installed in dwelling house after owner's execution of mortgage thereon.—Home Owners' Loan Corp. v. Eyanson, 46 N.E.2d 711, 113 Ind.App. 52.—Fixt 18.1.

N.J.Err. & App. 1933. "Material injury to freehold," as used in Uniform Conditional Sales Act, in one sense means physical injury, but in another injury to institution of which structure is part (Comp.St.Supp. § 182—93).—Russ Distributing Corp. v. Lichtman, 166 A. 513, 111 N.J.L. 21.—Fixt 22.

Wis. 1936. Conditional seller's removal of twenty-foot silo constructed of thirty-inch concrete staves placed on but not fastened to concrete foundation and used in connection with wooden runway fastened to barn but not to silo held not "material injury to freehold" within statute governing conditional seller's rights as against third persons, precluding prior mortgagee from recovering against such seller (St.1933, § 122.07).—Myhre v. Michigan Silo Co., 265 N.W. 703, 220 Wis. 593.—Fixt 20.

Wis. 1933. Test of removability of goods sold under conditional sales contract and affixed to realty is "material injury to freehold," not whether goods are essential to functioning of plant or building (St.1929, § 122.07).—People's Sav. & Trust Co. v. Munsert, 249 N.W. 527, 212 Wis. 449, 88 A.L.R. 1306, rehearing denied 250 N.W. 385, 212 Wis. 449, 88 A.L.R. 1306.—Fixt 22.

MATERIAL INJURY TO THE FREEHOLD

C.C.A.3 (Pa.) 1939. As applied to thirty-story office building, words "freehold" and "realty" in provision of Pennsylvania Conditional Sales Act that seller's reservation of property in goods, so attached to realty as not to be severable without "material injury to freehold," shall be void as against owner or prior encumbrancer not assenting thereto, embrace building as complete going or operating plant, and words "material injury to the freehold" mean injury to building as operating plant, not merely to physical construction thereof. 69 P.S. § 404, second subd.—Medical Tower Corp. v. Otis Elevator Co., 104 F.2d 133.—Fixt 9.

Del.Super. 1941. The phrase "material injury to the freehold," as used in Conditional Sales Act provision relating to removal of certain fixtures, means physical injury to the building and not merely the deprivation of things which may be advantageous or even essential to the usefulness or functioning of a plant or building. Rev.Code 1935,

§ 5957.—Keil Motor Co. v. Home Owners Loan Corp., 47 A.2d 164, 43 Del. 322, 4 Terry 322.—Fixt 22.

Ind.App. 1943. The words “material injury to the freehold” in Conditional Sales Act are not used in sense that severance and removal of any goods affixed to realty causes such injury, and removal of fixtures conditionally sold, leaving structure intact, complete, and usable as before their installation, works no such injury to freehold. Burns’ Ann.St. § 58–806.—Home Owners’ Loan Corp. v. Eyanson, 46 N.E.2d 711, 113 Ind.App. 52.—Fixt 22.

Pa. 1940. “Material injury to the freehold” within statute providing that reservation of property, under conditional sales contracts, in chattels attached to realty shall be void as against a prior mortgagee or other prior incumbrancer of realty, who has not assented to reservation of property in chattels, if any of the chattels are so attached to realty as not to be severable without material injury to the freehold, means injury to building as an operating plant, rather than injury to physical structure. Act May 14, 1925, P.L. 722, § 2.—Land Title Bank & Trust Co. v. Stout, 14 A.2d 282, 339 Pa. 302.—Fixt 20.

Pa. 1940. Where elevators were installed in apartment under conditional sales contract recorded in 1926, at which time vendor had notice of existence of prior mortgage on building, but did not obtain mortgagee’s assent to vendor’s reservation of property in elevators, and mortgage specifically included elevators and machinery “now or hereafter” standing on premises and constituting part of plant and used in its operation as an apartment, and elevators were essential in practical operation of building as an apartment, elevators could not be removed without “material injury to the freehold”, and were part of “freehold” and subject to lien of mortgage, especially in view of vendor’s delay until 1939 before claiming elevators as against mortgagee. Act May 14, 1925, P.L. 722.—Land Title Bank & Trust Co. v. Stout, 14 A.2d 282, 339 Pa. 302.—Fixt 20.

Pa. 1934. In statute providing that as against prior incumbrancer of realty, who has not assented to conditional seller’s reservation of property in goods so attached to realty as not to be severable without material injury to freehold, reservation of property in such goods shall be void, notwithstanding filing of the contract, unless injury can be completely repaired, words “realty” and “freehold,” when applied to industrial plant, mean plant in its complete integrity, and words “material injury to the freehold” mean material injury to the operating plant, and are not confined to injury to physical structure of building alone (69 PS § 404).—Central Lithograph Co. v. Eatmor Chocolate Co., 175 A. 697, 316 Pa. 300.—Fixt 20.

Wis. 1933. Removal of fixtures conditionally sold, leaving intact structure, complete and usable as it was before their installation, works no “material injury to the freehold” within statute defining rights of parties to goods conditionally sold and affixed to realty.—People’s Sav. & Trust Co. v.

Munsert, 249 N.W. 527, 212 Wis. 449, 88 A.L.R. 1306, rehearing denied 250 N.W. 385, 212 Wis. 449, 88 A.L.R. 1306.

MATERIAL INJURY TO THE PREMISES

Ind. 1940. As respects the character of a chattel as personality or “fixture” the test as to whether it may be removed without “material injury to the premises” means physical damage to the premises and not mere deprivation of the value of the chattels.—Citizens Bank of Greenfield v. Mergenthaler Linotype Co., 25 N.E.2d 444, 216 Ind. 573.—Fixt 7.

Ind.App. 1943. The term “material injury to the premises”, within rule that after-acquired property clause in real estate mortgage covers chattels, removal of which from realty would materially injure premises, means physical damage, not merely deprivation of useful or advantageous chattels.—Home Owners’ Loan Corp. v. Eyanson, 46 N.E.2d 711, 113 Ind.App. 52.—Fixt 18.1.

Ind.App. 1943. A furnace, merely set on concrete floor of basement of mortgaged dwelling house, in floors of which holes were cut for registers, to which hot air pipes led from furnace, did not become part of realty, and hence was not covered by provision of mortgage that lien thereof included all heating fixtures attached to realty, as removal of furnace would not constitute “material injury to the premises”. Burns’ Ann.St. §§ 58–804, 58–806.—Home Owners’ Loan Corp. v. Eyanson, 46 N.E.2d 711, 113 Ind.App. 52.—Fixt 18.1.

MATERIAL IN PLACE

Minn. 1941. “Material in place” means that material is hauled and put in place on highway at a unit price per cubic yard.—State v. Elsberg, 295 N.W. 913, 209 Minn. 167.

MATERIAL INQUIRIES

C.A.3 (N.J.) 1954. Questions, put to defendant before grand jury, which was investigating an alleged false non-Communist affidavit filed by union business agent, whether defendant had ever attended meeting of Communist Party, collected dues for Communist Party, or handled any money for such party, were “material inquiries” within statute making perjury a crime. 18 U.S.C.A. § 1621; National Labor Relations Act, § 9(h), as amended by Labor Management Relations Act of 1947, 29 U.S.C.A. § 159(h).—U.S. v. Neff, 212 F.2d 297.—Perj 11(7).

MATERIAL INSIDE INFORMATION

C.A.2 (N.Y.) 1968. Basic test in determining whether information of insider is “material inside information”, so that insider must disclose information or refrain from dealing with stock or securities of corporation, is whether reasonable man would attach importance to information in determining his choice of action in transaction in question, and that encompasses any fact which in reasonable and objective contemplation might affect value of corporation’s stock or securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Securities and Exchange Commission v. Texas Gulf Sulphur

Co., 401 F.2d 833, 2 A.L.R. Fed. 190, certiorari denied *Kline v. Securities and Exchange Commission*, 89 S.Ct. 1454, 394 U.S. 976, 22 L.Ed.2d 756, certiorari denied *Coates v. Securities and Exchange Commission*, 89 S.Ct. 1454, 394 U.S. 976, 22 L.Ed.2d 756, on remand 312 F.Supp. 77, affirmed in part, reversed in part 446 F.2d 1301, on remand 331 F.Supp. 671, certiorari denied *Texas Gulf Sulphur Co. v. S.E.C.*, 92 S.Ct. 561, 404 U.S. 1005, 30 L.E.—Corp 187, 316(3); Sec Reg 60.28(11), 60.28(12).

MATERIAL INTEREST

C.C.A.6 1936. In the commonly accepted legal sense, a “substantial interest” is something more than a merely nominal interest, and, in respect to corporations, a “definite” and “material interest” is an interest beyond what is usually referred to as represented by “qualifying shares.”—*Miller v. Commissioner of Internal Revenue*, 84 F.2d 415, appeal after remand 103 F.2d 58.

D.N.J. 1997. Under New Jersey law, party has “material interest” in controversy, and must be joined pursuant to entire controversy doctrine, if he can affect or be affected by judicial outcome of legal controversy.—*Rhodes v. Township of Saddle Brook*, 980 F.Supp. 777.—Action 53(1).

Pa.Super. 1999. A “material interest” by a client in a petition for attorney fees is determined by whether the client has anything to lose if the counsel fees are denied; if counsel must prevail on the fee petition to get paid at all, then the client has nothing to lose if counsel fees are denied and may not recover fees for preparing and litigating the petition itself.—*Birth Center v. St. Paul Companies, Inc.*, 727 A.2d 1144, reargument denied, appeal granted in part 747 A.2d 858, 560 Pa. 633, affirmed 787 A.2d 376, 567 Pa. 386.—Costs 194.18.

MATERIAL INTERFERENCE WITH SURFACE USE

Colo. 1997. For purposes of establishing prima facie case of trespass on ground of excessive surface use by oil and gas operator, “material interference with surface use” is interference which is not reasonable from perspective of surface owner and considering only the impact on surface use.—*Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, as modified on denial of rehearing.—Mines 51(1).

MATERIAL INTERVENING CHANGE IN THE LAW

Wash. 1997. Overruling of prior appellate court opinion on which personal restraint petitioner's offender score was calculated was “material intervening change in the law” providing good cause for successive petition seeking relief from improper sentence. West's RCWA 9.94A.360(8); RAP 16.4(d).—*Matter of Johnson*, 933 P.2d 1019, 131 Wash.2d 558.—Hab Corp 897.

MATERIAL IN THE PREPARATION OF THE DEFENSE

D.D.C. 1979. Documents are “material in the preparation of the defense” if there is strong indi-

cation that they will play important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment and rebuttal. Fed.Rules Cr.Proc. Rule 16(a)(1)(C), 18 U.S.C.A.—*U.S. v. Felt*, 491 F.Supp. 179.—Crim Law 627.6(2).

MATERIAL INVOLVEMENT

C.A.D.C. 1993. Postformation legal services provided on behalf of applicant for UHF television station license by allegedly passive owners of applicant qualified as “material involvement” in applicant's affairs, such as would warrant denial of full integration credit to applicant.—*Marin TV Services Partners, Ltd. v. F.C.C.*, 993 F.2d 261, 301 U.S.App. D.C. 222.—Tel 389.

MATERIAL ISSUE

C.A.9 (Cal.) 1977. “Material issue” whose existence will preclude the granting of summary judgment is one which may affect outcome of litigation. Fed.Rules Civ.Proc. rule 56, 28 U.S.C.A.—*Mutual Fund Investors, Inc. v. Putnam Management Co., Inc.*, 553 F.2d 620.—Fed Civ Proc 2470.1.

C.A.1 (N.H.) 1994. For purposes of summary judgment, a “material issue” is one that affects outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Collins v. Martella*, 17 F.3d 1.—Fed Civ Proc 2470.1.

C.A.8 (S.D.) 1978. In Mann Act prosecution, defendant's intent was a “material issue”, within rule permitting admission of evidence of other wrongdoing if material issue is raised on subject for which such evidence is admissible. 18 U.S.C.A. §§ 2421 et seq., 2422; Federal Rules of Evidence, rule 404(b), 28 U.S.C.A.—*U.S. v. Drury*, 582 F.2d 1181.—Crim Law 371(1).

C.A.6 (Tenn.) 1994. Knowledge is “material issue” so as to permit admission of prior acts evidence when defendant claims he was unaware that he was committing criminal act. Fed.Rules Evid. Rule 404(b), 28 U.S.C.A.—*U.S. v. Johnson*, 27 F.3d 1186, 1994 Fed.App. 240P, certiorari denied 115 S.Ct. 910, 513 U.S. 1115, 130 L.Ed.2d 792.—Crim Law 370.

D.Mass. 1995. “Genuine issue” for purposes of precluding summary judgment is one that only a finder of fact can properly resolve because it may reasonably be resolved in favor of either party, and “material issue” is one that affects the outcome of the suit, and mere allegations or conjecture unsupported in the record are insufficient to raise genuine issue of material fact. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Zehner v. Central Berkshire Regional School Dist.*, 921 F.Supp. 850.—Fed Civ Proc 2470.1.

D.Mass. 1995. “Material issue,” for purposes of summary judgment, is one that affects outcome of suit. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*North Adams Regional Hosp. v. Massachusetts Nurses Ass'n*, 889 F.Supp. 507, affirmed 74 F.3d 346.—Fed Civ Proc 2470.1.

D.Mass. 1984. "Material issue" for purposes of defeating summary judgment motion is one that affects outcome of litigation. Fed.Rules Civ.Proc. Rule 56(a), 28 U.S.C.A.—*Polo Fashions, Inc. v. Branded Apparel Merchandising, Inc.*, 592 F.Supp. 648.—Fed Civ Proc 2470.1.

D.N.H. 1996. Party seeking summary judgment is generally required to make preliminary showing that no genuine issue of material fact exists; "genuine issue" is one that properly can be resolved only by finder of fact because it may reasonably be resolved in favor of either party and "material issue" is one that might affect outcome of suit under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Rubin v. Smith*, 919 F.Supp. 534.—Fed Civ Proc 2470.1.

D.N.H. 1994. For summary judgment purposes, "material issue" is one that affects outcome of suit. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*F.E.R.C. v. MacDonald*, 862 F.Supp. 667.—Fed Civ Proc 2470.1.

E.D.N.Y. 1996. Party opposing summary judgment must also demonstrate that any factual issue it raises is material issue capable of affecting outcome of trial; "material issue" is one that would allow reasonable jury to return verdict for nonmoving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*CrossLand Federal Sav. Bank by F.D.I.C. v. A. Suna & Co., Inc.*, 935 F.Supp. 184.—Fed Civ Proc 2470.1.

D.Puerto Rico 1984. "Material issue," for purposes of summary judgment rule, is one which affects outcome of litigation. Fed.Rules Civ.Proc. Rules 56, 56(c), 28 U.S.C.A.—*Del Valle v. Marine Transport Lines, Inc.*, 582 F.Supp. 573.—Fed Civ Proc 2470.1.

D.R.I. 1995. Mere existence of some alleged factual dispute will not defeat otherwise properly supported motion for summary judgment; issue must be a "genuine issue," which exists if there is sufficient evidence supporting claimed factual dispute to require choice between parties' differing versions of truth at trial, and must be a "material issue" which is one that may affect that outcome of the suit under the governing law. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—*Wojcik v. Town of North Smithfield*, 874 F.Supp. 508, affirmed 76 F.3d 1.—Fed Civ Proc 2470.1.

Cal.App. 4 Dist. 1942. In action to foreclose mortgage where defendant pleaded a special defense putting amount due in issue and the parties introduced evidence upon that issue, refusal of trial court in rendering judgment for principal, interest and attorney fees to find upon issue of amount due, which was a "material issue", constituted reversible error.—*Powell v. Johnson*, 123 P.2d 875, 50 Cal. App.2d 680.—App & E 1071.6.

Cal.App. 4 Dist. 1942. In action to foreclose mortgage with special defense putting amount due in issue, the special defense presented a "material issue" on which trial court should have made findings.—*Powell v. Johnson*, 123 P.2d 875, 50 Cal. App.2d 680.—Trial 397(1).

Ga. 1996. Testimony regarding anxiety over payment of medical bills does not relate to "material issue" as there can be no recovery for anxiety, agony, or worry over payment of medical bills; thus, tort defendant may not elicit collateral source evidence regarding insurance coverage for purposes of impeaching such testimony; overruling *Patterson v. Lauderback*, 211 Ga.App. 891, 440 S.E.2d 673; *Moore v. Mellars*, 208 Ga.App. 69, 430 S.E.2d 179.—*Warren v. Ballard*, 467 S.E.2d 891, 266 Ga. 408, on remand 474 S.E.2d 259, 222 Ga.App. 357.—Witn 405(1).

Ill.App. 3 Dist. 1993. Special interrogatory inquiring as to whether tow truck which oncoming vehicle struck was completely off traveled portion of westbound lanes and in stopped position at time of collision elicited response to "evidentiary issue" and not "material issue", and thus, trial court improperly submitted interrogatory to jury, where rights of parties did not depend on precise location of tow truck and jury could have found that tow truck driver was negligent without determining truck's exact position at time of collision. S.H.A. 735 ILCS 5/2-1108.—*Meister v. Henson*, 192 Ill. Dec. 444, 625 N.E.2d 404, 253 Ill.App.3d 619.—Trial 350.6(3).

La. 1982. Under statute requiring that evidence be relevant to "material issue," term "material issue" must be read in ordinary usage to mean of solid or weighty character, of consequence, or importance, rather than in artificial or legalistic sense. LSA-R.S. 15:435.—*State v. Ludwig*, 423 So.2d 1073.—Crim Law 382.

La.App. 1 Cir. 2000. "Material issue" is one of solid or weighty character, of consequence, or importance to the case.—*State v. Webb*, 764 So.2d 1008, 1999-1366 (La.App. 1 Cir. 3/31/00).—Crim Law 382.

La.App. 1 Cir. 1999. A defendant's right to present a defense is sanctioned constitutionally, and he can testify to or give evidence on any matter relevant to an issue material in the case, with "material issue" being one that is of solid or weighty character, of consequence, or importance to case. U.S.C.A. Const.Amend. 6.—*State v. Tran*, 743 So.2d 1275, 1998-2812 (La.App. 1 Cir. 11/5/99), writ denied 762 So.2d 1101, 1999-3380 (La. 5/26/00).—Crim Law 661; Witn 2(1).

La.App. 1 Cir. 1995. "Material issue" in case, on which defendant's right to testify or give evidence is constitutionally sanctioned, is one which is of solid or weighty character of consequence, or of importance to case.—*State v. Maize*, 655 So.2d 500, 1994-0736 (La.App. 1 Cir. 5/5/95), rehearing denied, writ denied 664 So.2d 451, 1995-1894 (La. 12/15/95).—Crim Law 382; Witn 88.

La.App. 1 Cir. 1993. "Material issue" is one which is of solid or weighty character, of consequence, or importance to case.—*State v. Probst*, 623 So.2d 79, writ denied 629 So.2d 1167.—Crim Law 382.

La.App. 1 Cir. 1993. Defendant's right to present defense is sanctioned constitutionally, and he

can testify to or give evidence on any matter relevant to issue material in the case, and "material issue" is one which is of solid or weighty character, of consequence, or importance to the case. U.S.C.A. Const.Amend. 6.—*State v. Bourg*, 615 So.2d 957.—Crim Law 661.

La.App. 1 Cir. 1991. "Material issue," to which defendant has right to present evidence, is one which is of solid or weighty character, of consequence, or importance to the case. LSA-R.S. 15:435.—*State v. Trosclair*, 584 So.2d 270, writ denied 585 So.2d 575.—Crim Law 382.

La.App. 1 Cir. 1985. To be admissible, evidence must be relevant to a "material issue," which is an issue of solid or weighty character, of consequence or importance to the case. LSA-R.S. 15:435.—*State v. Patch*, 470 So.2d 585, writ denied 475 So.2d 358.—Crim Law 382.

La.App. 2 Cir. 1990. "Material issue" is one which is of consequence or importance to case. LSA-R.S. 15:435, 15:441 (Repealed); LSA-C.E. arts. 401, 402; Fed.Rules Evid.Rule 401, 28 U.S.C.A.—*State v. Harrison*, 560 So.2d 450, motion for delayed appeal denied 565 So.2d 433, writ denied 619 So.2d 569.—Crim Law 382.

N.Y.Sup. 1918. Where causes of action are distinct, the doctrine of *res judicata* prevents a second litigation upon a material issue common to both actions; "material issue" in such connection not being restricted to basic issue raised by the pleading, but including any issue of fact the determination of which was necessary to determine main issue.—*Pearson v. Pearson*, 173 N.Y.S. 563, 104 Misc. 675.—Judgm 725(1).

Tex.App.—Eastland 1993. "Material issue" is one which affects legal significance of verdict.—*Rozelle v. Ben E. Keith Co.*, 864 S.W.2d 812, rehearing denied, and writ denied.—Trial 350.1.

MATERIAL ISSUE OF FACT

C.A.9 (Cal.) 1982. A "material issue of fact" is one that affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*S. E. C. v. Seaboard Corp.*, 677 F.2d 1301.—Fed Civ Proc 2470.1.

C.A.9 (Cal.) 1982. For purposes of summary judgment, "material issue of fact" is one that affects outcome of litigation and requires trial to resolve parties' differing versions of the truth. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*S. E. C. v. Seaboard Corp.*, 677 F.2d 1289.—Fed Civ Proc 2470.1.

C.D.Cal. 1996. For purpose of ruling on summary judgment motion claim that there is no genuine issue of material fact, "material issue of fact" is one that affects outcome of litigation and requires trial to resolve parties' differing versions of the truth; more than a metaphysical doubt is required to establish genuine issue of material fact. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Lucero v. Hensley*, 920 F.Supp. 1067.—Fed Civ Proc 2470.1.

C.D.Cal. 1996. "Material issue of fact," for purpose of summary judgment, is one that affects outcome of litigation and requires trial to resolve parties' differing versions of truth. Fed.Rules Civ. Proc.Rule 56(c), 28 U.S.C.A.—*Tyson v. Ratelle*, 166 F.R.D. 442.—Fed Civ Proc 2470.1.

D.Kan. 1990. "Material issue of fact" exists if proof thereof might affect outcome of lawsuit as assessed from controlling substantive law. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Pizza Management, Inc. v. Pizza Hut, Inc.*, 737 F.Supp. 1154, entered 1990 WL 112967.—Fed Civ Proc 2470.1.

D.Nev. 1997. For summary judgment purposes, "material issue of fact" is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 957 F.Supp. 1184, affirmed 146 F.3d 1088, 171 A.L.R. Fed. 783, certiorari denied 119 S.Ct. 541, 525 U.S. 1017, 142 L.Ed.2d 450.—Fed Civ Proc 2470.1.

D.Nev. 1996. "Material issue of fact" precluding summary judgment is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*Ray v. Continental Western Ins. Co.*, 920 F.Supp. 1094.—Fed Civ Proc 2470.1.

D.Nev. 1996. "Material issue of fact" is one that affects outcome of litigation and requires trial to resolve different versions of truth. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Reynolds v. Wolff*, 916 F.Supp. 1018.—Fed Civ Proc 2470.1.

D.Nev. 1995. "Material issue of fact" is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Insurance Co. of North America v. Hilton Hotels U.S.A., Inc.*, 908 F.Supp. 809, affirmed 110 F.3d 715.—Fed Civ Proc 2470.1.

D.Nev. 1995. For summary judgment purposes, "material issue of fact" is one that affects outcome of litigation and requires trial to resolve differing versions of the truth.—*Trustees of Hotel Employees and Restaurant Employees Intern. Union Welfare Fund v. Kirby*, 890 F.Supp. 939.—Fed Civ Proc 2470.1.

D.Nev. 1994. "Material issue of fact," for purpose of summary judgment, is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Eldorado Drive v. City of Mesquite*, 863 F.Supp. 1252.—Fed Civ Proc 2470.1.

D.Nev. 1994. "Material issue of fact," for purpose of summary judgment motion, is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ. Proc.Rule 56, 28 U.S.C.A.—*U.S. v. Weiss*, 847 F.Supp. 819.—Fed Civ Proc 2470.1.

D.Nev. 1994. For summary judgment purposes, "material issue of fact" is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ.Proc.Rule 56, 28

U.S.C.A.—Newhouse v. U.S., 844 F.Supp. 1389.—Fed Civ Proc 2470.1.

D.Nev. 1993. A “material issue of fact” which precludes summary judgment is one that affects outcome of litigation and requires trial to resolve differing versions of truth. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Hausch v. Donrey of Nevada, Inc., 833 F.Supp. 822.—Fed Civ Proc 2470.1.

D.Nev. 1992. “Material issue of fact” is one that affects outcome of litigation and requires to trial to resolve different versions of truth. Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Kalinauskas v. Wong, 808 F.Supp. 1469.—Fed Civ Proc 2470.1.

D.Nev. 1992. “Material issue of fact” necessary to preclude summary judgment is one that affects outcome of litigation and requires trial to resolve differing versions of the truth. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Rebel Oil Co., Inc. v. Atlantic Richfield Co., 808 F.Supp. 1464, affirmed in part, reversed in part 51 F.3d 1421, certiorari denied 116 S.Ct. 515, 516 U.S. 987, 133 L.Ed.2d 424, on remand 957 F.Supp. 1184, affirmed 146 F.3d 1088, 171 A.L.R. Fed. 783, certiorari denied 119 S.Ct. 541, 525 U.S. 1017, 142 L.Ed.2d 450.—Fed Civ Proc 2470.1.

D.Nev. 1992. “Material issue of fact” necessary to preclude summary judgment is one that affects outcome of litigation and requires trial to resolve differing versions of the truth. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Rowell v. Powerscreen Intern., Ltd., 808 F.Supp. 1459.—Fed Civ Proc 2470.1.

D.Nev. 1992. “Material issue of fact” is one that affects outcome of litigation and requires a trial to resolve differing versions of the truth.—Brown v. Las Vegas Sands, Inc., 146 F.R.D. 189.—Fed Civ Proc 2470.1.

D.Nev. 1989. “Material issue of fact,” for summary judgment purposes, is one that affects outcome of litigation and requires trial to resolve differing versions of the truth. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—Shearing v. Iolab Corp., 712 F.Supp. 1446.—Fed Civ Proc 2470.1.

D.Nev. 1988. Once summary judgment movant’s burden is met by presenting evidence which, if uncontroverted, would entitle movant to directed verdict at trial, burden then shifts to nonmovant to set forth specific facts demonstrating that there is genuine issue for trial; “material issue of fact” is one that affects outcome of litigation and requires trial to resolve different versions of truth.—Trustees of the Operating Engineers Pension Trust v. O’Dell, 682 F.Supp. 1506.—Fed Civ Proc 2544.

MATERIAL ISSUES

Idaho 1930. “Material issues” mean issues, findings on which are sufficient to justify judgment, completely adjudicating all disputed matters, notwithstanding what findings might be on other issues raised by pleadings.—Bentley v. Kasiska, 288 P. 897, 49 Idaho 416.—Trial 397(5).

Tenn.Ct.App. 1943. In equity suit chancellor must submit only “material issues” which are ones

that are determinative of the whole case or a distinct branch of it. Code 1932, §§ 10574–10580.—Third Nat. Bank v. American Equitable Ins. Co. of New York, 178 S.W.2d 915, 27 Tenn.App. 249.—Equity 378.

Tex.Civ.App.—Texarkana 1941. In trespass to try title suit, wherein plaintiff claimed that deed from plaintiff to defendants was forged, but jury found that deed was duly executed, special issues on whether plaintiff claimed the land adversely to defendants after execution of the deed or agreed with defendants to live upon the land upon certain conditions, which did not embrace all statutory elements of adverse possession, and if answered consistently would not support judgment for either party grounded upon limitation title, were not “ultimate” or “material issues” on any limitation title, and hence inconsistency in findings thereon did not preclude judgment for defendants, where definitions of legal terms used in such issues were not requested or given. Vernon’s Ann.Civ.St. arts. 2211, 5507, 5509, 5510, 7366.—Hogg v. Smith, 157 S.W.2d 165, writ refused w.o.m.—Trial 358.

MATERIAL ITEM

C.A.5 (Ala.) 1968. Where change from ratable method of accruing property taxes to lump sum method resulted in state property tax deduction of \$187,476.20, the change involved a “material item” of accounting and was thus covered by Internal Revenue Code section requiring a taxpayer to secure consent of secretary or his delegate before changing his method of accounting. 26 U.S.C.A. (I.R.C.1954) § 446(e).—Woodward Iron Co. v. U.S., 396 F.2d 552.—Int Rev 3102.

C.A.11 (Fla.) 1984. Essential characteristic of “material item” within purview of Treasury regulation governing change in accounting method is that it determines timing of income or deductions. 26 U.S.C.A. §§ 446, 481.—Knight-Ridder Newspapers, Inc. v. U.S., 743 F.2d 781.—Int Rev 3102.

Fed.Cl. 1996. Taxpayer’s change of its accounting method, for tax purposes, constituted “material item,” such that taxpayer was required to obtain consent of Commissioner of Internal Revenue before making such change, even if taxpayer were correcting its prior erroneous treatment of material item. 26 U.S.C.A. § 446(e).—Piccadilly Cafeterias, Inc. v. U.S., 36 Fed.Cl. 330.—Int Rev 3102.

Fed.Cl. 1996. Consent requirement for changing accounting methods, for tax purposes, is enforced by courts when taxpayer changes its treatment of “material item.” 26 U.S.C.A. § 446(e); 26 C.F.R. § 1.446–1(e)(2)(ii)(a).—Piccadilly Cafeterias, Inc. v. U.S., 36 Fed.Cl. 330.—Int Rev 3102.

Cl.Ct. 1989. Taxpayer intending to change any method of regularly computing income on any material item must first obtain consent of Secretary of Treasury; “material item” is any item involving timing of computing income or deductions. 26 U.S.C.A. § 446(e).—Diebold, Inc. v. U.S., 16 Cl.Ct. 193, affirmed 891 F.2d 1579, rehearing denied, and suggestion for rehearing declined, certiorari denied

111 S.Ct. 73, 498 U.S. 823, 112 L.Ed.2d 47.—Int Rev 3102.

MATERIALITY

U.S.La. 1995. Although constitutional duty of government to disclose favorable evidence to defendant is triggered by potential impact of favorable but undisclosed evidence, showing of “materiality” as required under *Brady* does not require demonstration by preponderance that disclosure of suppressed evidence would have resulted ultimately in defendant’s acquittal; rather, touchstone of materiality is “reasonable probability” of different result. U.S.C.A. Const.Amends. 5, 14.—*Kyles v. Whitley*, 115 S.Ct. 1555, 514 U.S. 419, 131 L.Ed.2d 490, on remand 54 F.3d 243, appeal after remand *State v. Kyles*, 706 So.2d 611, 1997-2660 (La.App. 4 Cir. 1/21/98).—Crim Law 700(2.1).

U.S.La. 1995. In determining whether evidence that government failed to disclose to defendant satisfied “materiality” test of *Brady*, question is not whether defendant would more likely than not have received different verdict with evidence, but whether in its absence he received “fair trial,” understood as a trial resulting in verdict worthy of confidence; “reasonable probability” of different result is accordingly shown when government’s evidentiary suppression undermines confidence in outcome of trial. U.S.C.A. Const.Amends. 5, 14.—*Kyles v. Whitley*, 115 S.Ct. 1555, 514 U.S. 419, 131 L.Ed.2d 490, on remand 54 F.3d 243, appeal after remand *State v. Kyles*, 706 So.2d 611, 1997-2660 (La.App. 4 Cir. 1/21/98).—Crim Law 700(2.1).

CMA 1993. When Court of Military Appeals applies “materiality” test to determine whether government’s failure to disclose requested evidence amounts to violation of due process, it gives benefit of any reasonable doubt to accused; if court has reasonable doubt as to whether result of proceeding would have been different, it grants relief, whereas, if it is satisfied that outcome would not be affected by new evidence, it would affirm. UCMJ, Art. 46, 10 U.S.C.A. § 846; U.S.C.A. Const.Amend. 5.—*U.S. v. Green*, 37 M.J. 88.—Mil Jus 530.

AFCMR 1992. Mere possibility that item of undisclosed exculpatory information may have helped defense or may have affected outcome of case does not establish “materiality” in constitutional sense, such as will require vacation of accused’s conviction. U.S.C.A. Const.Amend. 14.—*U.S. v. Branoff*, 34 M.J. 612, review gr in part 37 M.J. 61, set aside 38 M.J. 98, on remand 1993 WL 541222, review granted 40 M.J. 50, affirmed 40 M.J. 50.—Mil Jus 1426.

C.A.9 (Cal.) 2001. “Materiality” means having a natural tendency to influence, for purposes of charges of perjury and for making false statements for use in determining right to Social Security benefits. 18 U.S.C.A. § 162; Social Security Act, § 208(a)(3), 42 U.S.C.A. § 408(a)(3).—*U.S. v. Price*, 8 Fed.Appx. 849.—Perj 11(2); Social S 18.

C.A.9 (Cal.) 1998. Under federal common law in applying ERISA, misrepresentation is “material” if it affects insurability or the amount of premium;

in essence, “materiality” is determined by the misrepresentation’s effect on the insurer’s informed acceptance of risk, i.e., would knowledge of the true facts have influenced the insurer in deciding whether to accept the risk or in assessing amount of premium. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.; Restatement (Second) of Contracts § 164.—*Security Life Ins. Co. of America v. Meyling*, 146 F.3d 1184, amended on denial of rehearing.—Insurance 3003(4).

C.A.9 (Cal.) 1994. Scope of “materiality” requirement for bankruptcy fraud includes: matters relating to extent and nature of debtor’s assets; inquiries relating to debtor’s business transactions or his estate; matters relating to discovery of assets; history of debtor’s financial transactions; and statements designed to secure adjudication by particular bankruptcy court. 18 U.S.C.A. § 152.—*U.S. v. Lindholm*, 24 F.3d 1078, denial of post-conviction relief affirmed 61 F.3d 913.—Bankr 3861.

C.A.11 (Fla.) 1987. “Materiality,” for purposes of determining whether prosecution violated defendant’s due process rights by suppressing favorable evidence that was material to issues at trial, requires finding that, had evidence been disclosed to defense, reasonable probability exists that outcome of proceedings would have been different. U.S.C.A. Const.Amends. 5, 14.—*U.S. v. Burroughs*, 830 F.2d 1574, certiorari denied *Rogers v. U.S.*, 108 S.Ct. 1243, 485 U.S. 969, 99 L.Ed.2d 442.—Const Law 268(5).

C.A.5 (Fla.) 1975. In context of statute making it unlawful to make a false statement in any matter within jurisdiction of any department or agency of the United States, “materiality” means that the false statement must have a natural tendency to influence, or be capable of affecting or influencing a government function; the statement or representation need not have actually influenced an action of a government agency. 18 U.S.C.A. § 1001.—*U.S. v. McGough*, 510 F.2d 598.—Fraud 68.10(4).

C.A.11 (Ga.) 1991. Test of “materiality,” for purposes of offense of making false statements to federal department or agency, is whether statement has natural tendency to influence, or is capable of influencing, the exercise of a governmental function; Government must prove that statement had capacity to influence a determination required to be made in the course of the exercise of a government function. 18 U.S.C.A. §§ 1001, 1002.—*U.S. v. Grizzle*, 933 F.2d 943, rehearing denied, certiorari denied 112 S.Ct. 271, 502 U.S. 897, 116 L.Ed.2d 223.—Fraud 68.10(4).

C.A.5 (Ga.) 1976. Materiality is an element of offense of making or using any false writing or document in any matter within the jurisdiction of any department or agency of the United States knowing the same to contain any false, fictitious or fraudulent statement or entry; for such purposes “materiality” requires that the statement have a natural tendency to influence or be capable of influencing the decision of the tribunal in making a required determination. 18 U.S.C.A. § 1001.—U.S.

v. Johnson, 530 F.2d 52, certiorari denied 97 S.Ct. 96, 429 U.S. 833, 50 L.Ed.2d 97.—Fraud 68.10(4).

C.A.7 (Ill.) 1998. “Materiality” is defined as having a natural tendency to influence, or being capable of influencing, the decision of the decision-making body to which subject item was addressed.—U.S. v. Swanquist, 161 F.3d 1064, rehearing and suggestion for rehearing denied, certiorari denied 119 S.Ct. 2051, 526 U.S. 1160, 144 L.Ed.2d 218.—Crim Law 382.

C.A.7 (Ill.) 1958. “Materiality” with reference to evidence means the property of substantial importance and evidence is “material” where it is relevant and goes to substantial matters in dispute or has a legitimate or effective bearing on the decision thereof, while evidence is “competent” if it is fit for the purpose for which it is offered.—U.S. v. De Lucia, 256 F.2d 487, certiorari denied 79 S.Ct. 59, 358 U.S. 836, 3 L.Ed.2d 72, rehearing denied 79 S.Ct. 152, 358 U.S. 896, 3 L.Ed.2d 123.—Evid 143, 148.

C.A.6 (Ky.) 1995. “Materiality” of false statement, needed to support conviction for knowingly and willfully making false statement to United States Department or agency, is conclusion of law that must be fully supported by evidence, direct or circumstantial, and is subject to de novo review on appeal. 18 U.S.C.A. § 1001.—U.S. v. LeMaster, 54 F.3d 1224, 1995 Fed.App. 157P, rehearing and suggestion for rehearing denied, certiorari denied 116 S.Ct. 701, 516 U.S. 1043, 133 L.Ed.2d 657.—Crim Law 1139; Fraud 68.10(4), 69(6).

C.A.5 (La.) 2001. “Materiality” means having a natural tendency to influence, or being capable of influencing, the decision of the decisionmaking body to which it was addressed.—U.S. v. Fountain, 277 F.3d 714.—Crim Law 26.

C.A.5 (La.) 1975. For purposes of rule allowing court to permit defendant to inspect documents in possession of government upon a showing of materiality to preparation of defense and of reasonableness of the request, “materiality” means more than that the evidence in question bears some abstract or logical relationship to the issues in the case; there must be some indication that the pretrial disclosure of the disputed evidence would enable the defendant significantly to alter the quantum of proof in his favor; the extensiveness of the material which the government has produced and the availability of disputed material from other sources, including the defendant’s own knowledge, must also be considered. Fed.Rules Crim.Proc. rule 16(b), 18 U.S.C.A.—U.S. v. Ross, 511 F.2d 757, rehearing denied 513 F.2d 629, certiorari denied 96 S.Ct. 62, 423 U.S. 836, 46 L.Ed.2d 54.—Crim Law 627.6(2).

C.A.1 (Me.) 1996. “Genuineness” and “materiality,” for purposes of determining whether summary judgment should be granted, are not infinitely elastic euphemisms that may be stretched to fit whatever perrerrations catch a litigant’s fancy. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Blackie v. State of Me., 75 F.3d 716.—Fed Civ Proc 2470.1.

C.A.1 (Mass.) 1994. “Materiality,” for purposes of motion by a party posing summary judgment to obtain continuance to procure additional evidence, means material to issues raised on summary judgment; thus, kind of additional discovery that will serve to vivify such motion is theoretically different from, and ordinarily will be more restricted than, kind of discovery generally permitted under Federal Rules. Fed.Rules Civ.Proc.Rule 56(f), 28 U.S.C.A.—Resolution Trust Corp. v. North Bridge Associates, Inc., 22 F.3d 1198.—Fed Civ Proc 2553.

C.A.1 (Mass.) 1989. Police officer’s false grand jury testimony that he did not obtain copy of promotion examination with answers before taking examination was not deprived of its “materiality” simply because officer could no longer be prosecuted due to fact that statute of limitations had run; materiality was not dependent on testimony concerning element of crime for which grand jury could indict, and testimony did bear crucially upon activities of mastermind of conspiracy. 18 U.S.C.A. § 1623.—U.S. v. Nazzaro, 889 F.2d 1158, rehearing denied, denial of post-conviction relief affirmed 993 F.2d 1530.—Perj 11(7).

C.A.6 (Mich.) 2002. “Materiality,” in the context of a prosecution for visa fraud, is defined as a natural tendency to influence, or capability of influencing, the decision of the decisionmaking body to which it was addressed. 18 U.S.C.A. § 1546.—U.S. v. Kone, 307 F.3d 430, 2002 Fed.App. 355P.—Aliens 55.1.

C.A.8 (Mo.) 1976. Criterion for determining “materiality” of allegedly perjured testimony before a grand jury is whether or not the statements alleged to be perjurious tend to impede or hamper the course of the investigation by the grand jury. 18 U.S.C.A. § 1623.—U.S. v. Phillips, 540 F.2d 319, certiorari denied 97 S.Ct. 530, 429 U.S. 1000, 50 L.Ed.2d 611, appeal after remand 564 F.2d 32, certiorari denied 98 S.Ct. 1620, 435 U.S. 974, 56 L.Ed.2d 67.—Perj 11(7).

C.A.3 (N.J.) 1993. “Materiality,” for purposes of securities laws, is relative concept, so that court must appraise misrepresentation or omission in complete context in which author conveys it; in other words, particular misrepresentation or omission significant to reasonable investor in one document or circumstance may not influence reasonable investor in another. Securities Act of 1933, §§ 11, 12(2), 15 U.S.C.A. §§ 77k, 77l(2); Securities Exchange Act of 1934, § 10, 15 U.S.C.A. § 78j.—In re Donald J. Trump Casino Securities Litigation-Taj Mahal Litigation, 7 F.3d 357, 130 A.L.R. Fed. 633, certiorari denied Gollomp v. Trump, 114 S.Ct. 1219, 510 U.S. 1178, 127 L.Ed.2d 565.—Sec Reg 25.21(3), 25.62(4), 60.28(11).

C.A.3 (N.J.) 1993. Although “materiality” for purposes of securities fraud action, is mixed question of law and fact which trier of fact ordinarily decides, if alleged misrepresentations or omissions are so obviously unimportant to investor that reasonable minds cannot differ on question of materiality, it is appropriate for district court to rule that allegations are inactionable as matter of law. Secu-

rities Act of 1933, §§ 11, 12(2), 15 U.S.C.A. §§ 77k, 77l(2); Securities Exchange Act of 1934, § 10, 15 U.S.C.A. § 78j; Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A.—In re Donald J. Trump Casino Securities Litigation-Taj Mahal Litigation, 7 F.3d 357, 130 A.L.R. Fed. 633, certiorari denied *Gollomp v. Trump*, 114 S.Ct. 1219, 510 U.S. 1178, 127 L.Ed.2d 565.—Sec Reg 25.35, 25.75, 60.70.

C.A.3 (N.J.) 1993. “Materiality,” for purpose of application of bespeaks caution doctrine in securities fraud action, involves context-specific analysis such that warnings and cautionary language will sometimes suffice to render allegedly misleading misrepresentations or omissions immaterial as matter of law. Securities Act of 1933, §§ 11, 12(2), 15 U.S.C.A. §§ 77k, 77l(2); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—In re Donald J. Trump Casino Securities Litigation-Taj Mahal Litigation, 7 F.3d 357, 130 A.L.R. Fed. 633, certiorari denied *Gollomp v. Trump*, 114 S.Ct. 1219, 510 U.S. 1178, 127 L.Ed.2d 565.—Sec Reg 25.56, 60.27(1), 60.28(11).

C.A.10 (N.M.) 1987. In evaluating “materiality” of evidence withheld by state, court must look at entire trial to determine whether defendant’s conviction was obtained by violating due process, and whether his or her trial was tainted with fundamental unfairness because evidence was not disclosed to defense. U.S.C.A. Const. Amend. 14.—*Trujillo v. Sullivan*, 815 F.2d 597, certiorari denied 108 S.Ct. 296, 484 U.S. 929, 98 L.Ed.2d 256.—Crim Law 700(2.1).

C.A.2 (N.Y.) 1999. The proper test for “materiality,” for purposes of the statute prohibiting the making of false statements in the course of importing merchandise into the United States, is the “natural tendency” test, asking whether the false statement would have a natural tendency to influence customs officials, rather than the “but for” test, under which a false statement is material only if a truthful answer on a customs form would have actually prevented the item from entering the United States. 18 U.S.C.A. § 542.—*U.S. v. An Antique Platter of Gold*, 184 F.3d 131, certiorari denied *Steinhardt v. U.S.*, 120 S.Ct. 978, 528 U.S. 1136, 145 L.Ed.2d 929.—Cust Dut 123.

C.A.2 (N.Y.) 1997. Under New York law, party asserting fraud must be warranted in taking the misrepresented matter into account when deciding to act, as well as in believing that the misrepresentations were true; former requirement is “materiality” and the latter, “justifiable reliance.”—*Banque Franco-Hellenique de Commerce Intern. et Maritime, S.A. v. Christophides*, 106 F.3d 22, on remand 1997 WL 317398.—Fraud 18, 20.

C.A.2 (N.Y.) 1992. Under New York law, “materiality” is ordinarily question of fact, the standard for disclosure being whether reasonable insured would have believed fact was something that insurer would consider material.—*Christiania General Ins. Corp. of New York v. Great American Ins. Co.*, 979 F.2d 268.—Insurance 2958, 2985.

C.A.2 (N.Y.) 1984. Where false statement is made to public body or its representative, “materi-

ality” refers to impact that statement may reasonably have on ability of that agency to perform functions assigned to it by law; question is not what effect statement actually had, but rather whether the statement had potential for obstructive or inhibitive effect.—*U.S. v. Greenberg*, 735 F.2d 29.—Fraud 18.

C.A.2 (N.Y.) 1975. For purposes of statute proscribing the willful making of statements which are false and misleading with respect to any material fact in any application, report, or document required to be filed under Securities Exchange Act, “materiality” is an objective matter which is not necessarily limited by an accountant’s own uncontrolled subjective estimate of materiality. Securities Exchange Act of 1934, §§ 14, 32(a), 15 U.S.C.A. §§ 78n, 78ff(a).—*U.S. v. Natelli*, 527 F.2d 311, certiorari denied 96 S.Ct. 1663, 425 U.S. 934, 48 L.Ed.2d 175.—Sec Reg 49.22(2).

C.A.2 (N.Y.) 1965. The requirements that misrepresentation be material and that reliance be placed thereon is carried over in civil cases, under securities and exchange commission rule, arising out of nondisclosure by insider purchasing stock of minority stockholder; the test of “materiality” is whether reasonable man would have been influenced to act differently if insider had disclosed to him the undisclosed fact, and test of “reliance” is whether minority stockholder would have been influenced to act differently than he did if insider had disclosed to him the undisclosed fact. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*List v. Fashion Park, Inc.*, 340 F.2d 457, 22 A.L.R.3d 782, certiorari denied 86 S.Ct. 23, 382 U.S. 811, 15 L.Ed.2d 60, rehearing denied 86 S.Ct. 305, 382 U.S. 933, 15 L.Ed.2d 344.—Corp 187, 316(3); Sec Reg 60.46, 60.48(2).

C.A.10 (Okla.) 2001. When evaluating the materiality of an event that is contingent or speculative in nature, “materiality” will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*City of Philadelphia v. Fleming Companies, Inc.*, 264 F.3d 1245.—Sec Reg 60.28(11), 60.46.

C.A.10 (Okla.) 1999. “Materiality” element of *Brady* claim requires reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different.—*Johnson v. Gibson*, 169 F.3d 1239, certiorari denied 120 S.Ct. 415, 528 U.S. 972, 145 L.Ed.2d 324.—Crim Law 700(2.1).

C.A.10 (Okla.) 1992. Evidence was sufficient to support finding of “materiality” element for offense of making false statement to federal agency; postal worker’s statement on disability benefits form that he was not self-employed, when in fact he had his own toy business which had gross sales of \$34,868.66, was material in that worker’s false answer was capable of influencing Department of Labor to continue permitting worker to receive full

benefits. 18 U.S.C.A. § 1001.—U.S. v. Harrod, 981 F.2d 1171, certiorari denied 113 S.Ct. 2350, 508 U.S. 913, 124 L.Ed.2d 259.—Fraud 69(5).

C.A.10 (Okla.) 1985. “Materiality” for purposes of 18 U.S.C.A. § 1623(a) making it a crime for person to knowingly make false material declaration under oath is a question for court to decide; test of materiality is whether the false statement has a natural tendency to influence or was capable of influencing the decision required to be made.—U.S. v. Girdner, 773 F.2d 257, certiorari denied 106 S.Ct. 1379, 475 U.S. 1066, 89 L.Ed.2d 605.—Perj 11(2), 36.

C.A.1 (Puerto Rico) 1999. Assuming that materiality is an element of the crime of false entry in statement to an insured bank, “materiality” requires proof that the entry would have the capability or tendency to influence the bank in its decision-making process, or impair or pervert the functioning of government institution. 18 U.S.C.A. § 1006.—U.S. v. Blasini-Lluberis, 169 F.3d 57.—Banks 509.10.

C.A.1 (R.I.) 1996. “Materiality” of allegedly false statement, for purposes of enhancing sentence for obstruction of justice, does not require factual nexus with underlying criminal conduct; rather, it involves some attestation that could influence court’s sentencing discretion, including but not limited to determination of period of incarceration, conditions of supervised release, or whether restitution is awarded. U.S.S.G. § 3C1.1, 18 U.S.C.A.—U.S. v. Kelley, 76 F.3d 436.—Sent & Pun 761.

C.A.6 (Tenn.) 1998. “Materiality” of alleged *Brady* material, for purposes of habeas relief, is not found by determining whether there was sufficient evidence to convict even when the exculpatory evidence was added in; rather, the proper inquiry is whether the *Brady* violation undermines confidence in the verdict, because there is a reasonable probability that there would have been a different result had the evidence been disclosed.—Coe v. Bell, 161 F.3d 320, 1998 Fed.App. 336P, rehearing and suggestion for rehearing denied, certiorari denied 120 S.Ct. 110, 528 U.S. 842, 145 L.Ed.2d 93, rehearing denied 120 S.Ct. 567, 528 U.S. 1039, 145 L.Ed.2d 442, motion to stay mandate denied 210 F.3d 371.—Hab Corp 480.

C.A.5 (Tex.) 1993. “Materiality” for securities fraud purposes is not judged in abstract, but in light of surrounding circumstances; there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investors as significantly altering total mix of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Krim v. BancTexas Group, Inc., 989 F.2d 1435.—Sec Reg 60.46.

C.A.5 (Tex.) 1968. “Materiality” is determined by whether false testimony was capable of influencing the tribunal on issue before it.—Luna v. Beto, 395 F.2d 35, certiorari denied 89 S.Ct. 1310, 394 U.S. 966, 22 L.Ed.2d 568.—Perj 11(2).

C.A.10 (Utah) 1994. In determining “materiality” of evidence allegedly withheld by prosecution in

violation of *Brady*, potential impact of that evidence should be weighed in light of whole record; what might be considered insignificant evidence in strong case might suffice to disturb already questionable verdict. U.S.C.A. Const.Amend. 14.—U.S. v. Robinson, 39 F.3d 1115.—Crim Law 700(2.1).

C.A.4 (Va.) 1996. Test for “materiality,” for purposes of making false statement to department or agency of United States, is whether false statement has natural tendency to influence agency action or is capable of influencing agency action. 18 U.S.C.A. § 1001.—U.S. v. David, 83 F.3d 638.—Fraud 68.10(4).

C.A.3 (Virgin Islands) 1985. “Materiality,” in misrepresentation context usually goes only to whether misrepresentation was of sufficient import to be capable of fraudulently inducing action.—Government of Virgin Islands v. Lee, 775 F.2d 514.—Fraud 68.

C.A.7 (Wis.) 1992. To satisfy “materiality” requirement of Rule 10b–5 in a fraud-on-the-market case, plaintiff must allege facts suggesting that false statements significantly effect total mix of information available to market. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Roots Partnership v. Lands’ End, Inc., 965 F.2d 1411, rehearing denied.—Sec Reg 60.27(1).

C.A.7 (Wis.) 1988. “Reliance” and “materiality” are not same thing under statute that prohibits knowingly making false statements to influence federally insured bank. 18 U.S.C.A. § 1014.—U.S. v. Shriver, 842 F.2d 968.—Banks 509.20.

C.C.A.8 (Mo.) 1939. “Materiality” with reference to evidence means the property of substantial importance as distinguished from formal requirement.—Willoughby v. Jamison, 103 F.2d 821, certiorari denied 60 S.Ct. 111, 308 U.S. 588, 84 L.Ed. 492.—Evid 143.

N.D.Ala. 2001. “Materiality,” as required by the Social Security Act for evaluation of new evidence on appeal of denial of benefits by ALJ, means that the new evidence is relevant and probative so that there is a reasonable possibility that it would change the administrative outcome. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g); 20 C.F.R. § 404.970(b).—Fry v. Massanari, 209 F.Supp.2d 1246.—Social S 142.5.

C.D.Cal. 2002. “Materiality” of false statement or omission is judged, for purposes of complaint to deny debtor’s discharge, not by its actual effect, but by the effect it was capable of producing. Bankr. Code, 11 U.S.C.A. § 727(a)(4).—In re Guadarrama, 284 B.R. 463.—Bankr 3282.1.

E.D.Cal. 1994. Defendant seeking discovery from government of documents or tangible objects on ground that they are material to preparation of defendant’s defense within meaning of discovery rule must make more than broadly phrased request for helpful or relevant evidence but, rather, *prima facie* showing of “materiality” is required; information sought must be helpful to defendant’s case, and defendant must present facts tending to show that government has possession of information. Fed.

Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Liquid Sugars, Inc., 158 F.R.D. 466.—Crim Law 627.8(3).

S.D.Cal. 1975. "Materiality" of misstatement in connection with sale of securities is viewed by an objective rather than a subjective standard; surrounding circumstances must be examined to determine whether a reasonable investor, not the individual investor, would attach importance to the alleged misrepresentation or omission. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—In re U. S. Financial Securities Litigation, 69 F.R.D. 24.—Sec Reg 60.46.

D.Conn. 2000. For purposes of the rule that summary judgment may be granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, "genuineness" runs to whether disputed factual issues could reasonably be resolved in favor of either party, while "materiality" runs to whether the dispute concerns facts that can affect the outcome under the applicable substantive law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Peralta v. Centand Corp., 123 F.Supp.2d 65.—Fed Civ Proc 2470.1.

D.D.C. 1991. "Materiality" within false statement statute is not concerned with whether alleged omission would have affected the ultimate agency determination. 18 U.S.C.A. § 1001.—U.S. v. Dale, 782 F.Supp. 615.—Fraud 68.10(4).

D.D.C. 1975. Within purview of Securities and Exchange Commission rule barring use of manipulative and deceptive devices in securities transactions, "materiality" encompasses any fact which in reasonable and objective contemplation might affect value of corporation's stock or securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Securities and Exchange Commission v. General Refractories Co., 400 F.Supp. 1248.—Sec Reg 60.28(11).

N.D.Fla. 1997. Concept of "materiality" under federal doctrine of *uberrima fidei* in marine insurance contracts is broader than concept of materiality found in Florida insurance statute governing representations in insurance applications: it is that which could possibly influence mind of prudent and intelligent insurer in determining whether he would accept risk. West's F.S.A. § 627.409(1).—Northfield Ins. Co. v. Barlow, 983 F.Supp. 1376.—Insurance 2996.

S.D.Fla. 1998. Under federal law of *uberrimae fidei*, "materiality" of misrepresentation making policy void *ab initio* is that which can possibly influence the mind of a prudent and intelligent insurer in determining whether it will accept the risk.—Certain Underwriters at Lloyds, London v. Giroire, 27 F.Supp.2d 1306.—Insurance 2996.

M.D.Ga. 1996. On motion for summary judgment, "materiality" aspect is determined by reference to substantive law that controls. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Powell v. Haverly Furniture Companies, Inc., 912 F.Supp. 532.—Fed Civ Proc 2470.1.

M.D.Ga. 1995. "Materiality" of dispute, for summary judgment purposes, is determined by reference to the substantive law that controls the case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Worthy v. Widnall, 900 F.Supp. 475, affirmed 86 F.3d 1171.—Fed Civ Proc 2470.1.

N.D.Ill. 1995. On motion for summary judgment, "materiality" is determined by assessing whether fact in dispute, if proven, would satisfy legal element under theory alleged or otherwise affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Pyka v. Village of Orland Park, 906 F.Supp. 1196.—Fed Civ Proc 2470.1.

N.D.Ill. 1995. "Materiality," for summary judgment purposes, is determined by assessing whether fact in dispute, if proven, would satisfy legal element under theory alleged or otherwise affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Kedziora v. Citicorp Nat. Services, Inc., 901 F.Supp. 1321, affirmed Channell v. Citicorp Nat. Services, Inc., 89 F.3d 379, rehearing and suggestion for rehearing denied, on remand 1996 WL 563536.—Fed Civ Proc 2470.1.

N.D.Ill. 1995. "Materiality" for summary judgment purposes is determined by assessing whether fact in dispute, if proven, would satisfy legal element under theory alleged or otherwise affect outcome of case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Wagner v. NutraSweet Co., 900 F.Supp. 959, reversed in part 95 F.3d 527, on remand 170 F.R.D. 448.—Fed Civ Proc 2470.1.

N.D.Ill. 1992. "Materiality" of representation in insurance application, for purposes of determining whether omission of facts from insurance application entitles insurer to rescission under Illinois law, is determined by asking whether reasonably careful and intelligent persons would have regarded omitted facts as substantially increasing chances of events insured against so as to cause rejection of application or different conditions, such as higher premiums.—Bageanis v. American Bankers Life Assur. Co. of Florida, 783 F.Supp. 1141.—Insurance 2964.

N.D.Ind. 2003. In the context of provision of Social Security Act allowing for remand to permit claimant to present new evidence in support of application for social security benefits, term "materiality" means that there is a reasonable probability that the Commissioner of Social Security would have reached a different conclusion had the evidence been considered. Social Security Act, § 205(g), as amended, 42 U.S.C.A. § 405(g).—Felver v. Barnhart, 243 F.Supp.2d 895.—Social S 149.

S.D.Ind. 1998. "Materiality" of evidence is determined with reference to substantive law being applied, and it depends on legal theories plaintiffs seek to employ to support their claims.—Adams v. Indiana Bell Telephone Co., Inc., 2 F.Supp.2d 1077, reversed 231 F.3d 414, rehearing and rehearing denied.—Evid 143.

S.D.Ind. 1994. Issue of "materiality" for purposes of § 10(b) claim is mixed question of fact and law, involving application of legal standard to spe-

cific set of facts. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Pippenger v. McQuik's Oilube, Inc., 854 F.Supp. 1411.—Sec Reg 60.70.

D.Kan. 2002. As to "materiality" on a motion for summary judgment, the substantive law will identify which facts are material, i.e., only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment; factual disputes that are irrelevant or unnecessary will not be counted. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Ham-mad v. Bombardier Learjet, Inc., 192 F.Supp.2d 1222.—Fed Civ Proc 2470.1.

D.Kan. 1996. "Materiality" of debtor's false oaths, for debtor discharge purposes, does not depend upon whether a false oaths are prejudicial to creditors, but on whether false oath is pertinent to discovery of debtor's assets or past transactions. Bankr.Code, 11 U.S.C.A. § 727(a)(4).—In re Brown, 194 B.R. 514, affirmed in part, reversed in part 108 F.3d 1290, rehearing denied.—Bankr 3282.1.

E.D.La. 2001. For purposes of determining whether suppressed evidence is material to guilt or punishment for *Brady* purposes, "materiality" does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal; rather, "materiality" is established if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, and there is a reasonable probability of a different result when the government's evidentiary suppression undermines confidence in the outcome of the trial.—Faulkner v. Cain, 133 F.Supp.2d 449.—Crim Law 700(2.1).

D.Mass. 2002. Under Massachusetts law, in context of informed consent analysis, "materiality" may be said to be the significance a reasonable person, in what the physician knows or should know is his patient's position, would attach to the disclosed risk or risks in deciding whether to submit or not to submit to surgery or treatment; appropriate information may include the nature of the patient's condition, the nature and probability of the risks involved, the benefits to be reasonably expected, the inability of the physician to predict results, if that is the situation, the irreversibility of the procedure, if that be the case, the likely result of no treatment, and the available alternatives, including their risks and benefits.—Harrison v. U.S., 233 F.Supp.2d 128.—Health 906, 908.

D.Mass. 1998. Under both federal law and the law of the Commonwealth of Massachusetts, "materiality," for purposes of a misrepresentation claim, is defined as whether a reasonable man would attach importance to the facts not disclosed in determining his choice of action in the transaction in question.—Rodowicz v. Massachusetts Mut. Life Ins. Co., 3 F.Supp.2d 1481, affirmed in part, reversed in part 192 F.3d 162, as amended, rehearing en banc denied 195 F.3d 65.—Fraud 18.

D.Mass. 1992. "Materiality" of misrepresentation for purposes of action under § 10b of Securities Exchange Act and Rule 10b-5 is generally defined in context of reasonable shareholder. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Rand v. M/A-Com, Inc., 824 F.Supp. 242.—Sec Reg 60.27(1).

D.Mass. 1985. "Materiality," for purposes of allegation that material information was withheld from patent examiner, means facts known to applicant which but for nondisclosure would have prevented patent from issuing or would have restricted the claims.—Polaroid Corp. v. Eastman Kodak Co., 641 F.Supp. 828, stay denied 833 F.2d 930, affirmed 789 F.2d 1556, certiorari denied 107 S.Ct. 178, 479 U.S. 850, 93 L.Ed.2d 114, decision supplemented 1990 WL 324105.—Pat 97.

D.Mass. 1978. Under certain circumstances, evidence tending to impeach the credibility of prosecution witnesses can meet the test of "materiality," for purposes of prosecutorial disclosure requirements.—Lewinski v. Ristaino, 448 F.Supp. 690.—Crim Law 700(4).

D.Mass. 1966. The basic test of "materiality" to be applied under rule making it unlawful for a person in negotiating sale of stock to make any untrue statement of a material fact or to omit to state a material fact is whether a reasonable man would attach importance to the fact not disclosed in determining his choice of action in the transaction in question. Securities Exchange Act of 1934, § 10(b) as amended 15 U.S.C.A. § 78j(b).—Rogen v. Ilikon Corp., 250 F.Supp. 112, reversed 361 F.2d 260.—Sec Reg 60.28(11).

N.D.Miss. 1980. For purpose of civil liability under Interstate Land Sales Full Disclosure Act, test for determining "materiality" is whether reasonable investor might have considered omitted fact or erroneous statement as important in making a decision. Interstate Land Sales Full Disclosure Act, § 1410 as amended 15 U.S.C.A. § 1709.—Hester v. Hidden Valley Lakes, Inc., 495 F.Supp. 48.—Cons Prot 8.

S.D.Miss. 1990. "Materiality," for purposes of summary judgment motion, connotes disputes over fact which might affect outcome of case under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Smith v. Orkin Exterminating Co., Inc., 791 F.Supp. 1137, affirmed 943 F.2d 1314.—Fed Civ Proc 2470.1.

S.D.Miss. 1990. "Materiality" of disputed fact issue, for purposes of summary judgment motion, connotes disputes over facts which might affect outcome of case under governing law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Equitable Mortg. Corp. v. Mortgage Guar. Ins. Corp., 791 F.Supp. 620.—Fed Civ Proc 2470.1.

E.D.Mo. 1996. Definition of "materiality," as term is used in connection with stating cause of action for Securities Fraud under § 10(b) and Rule 10b-5, is same whether misrepresentations or omissions are involved. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b);

17 C.F.R. § 240.10b-5.—*Jakobe v. Rawlings Sporting Goods Co.*, 943 F.Supp. 1143.—Sec Reg 60.28(11), 60.46.

W.D.Mo. 1994. “Materiality” of fact issues is identified by substantive law to be applied and issues that are collateral to substantive law do not preclude summary judgment. Fed.Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.—*England v. John Alden Life Ins. Co.*, 846 F.Supp. 798.—Fed Civ Proc 2470.1.

W.D.Mo. 1941. “Materiality” of inaccurate statements of fact to which motion for new trial referred meant material influence on the factual results reached in opinion and in the findings of fact.—*American Ins. Co. v. Lucas*, 38 F.Supp. 926.—Fed Civ Proc 2348.

D.N.J. 1977. For purpose of applying the rule of *Brady v. Maryland* requiring disclosure by the prosecution of evidence favorable to an accused which is “material” either to guilt or to punishment, test of “materiality” is not what “might” affect a verdict or what has the possibility of affecting a verdict.—*U.S. v. Dansker*, 449 F.Supp. 1057, affirmed in part, vacated in part, reversed in part 565 F.2d 1262, certiorari dismissed 98 S.Ct. 905, 434 U.S. 1052, 54 L.Ed.2d 805.—Crim Law 700(2.1).

E.D.N.Y. 2000. Harm to creditors or estate, or to trustee’s administration of estate, is not the test for “materiality” under “false oath” discharge exception. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—*In re Murray*, 249 B.R. 223.—Bankr 3282.1.

E.D.N.Y. 1999. Test of “materiality” in federal securities fraud case is whether there is substantial likelihood that reasonable investor would consider information important in making investment decision. Securities Act of 1933, § 17(a)(1), 15 U.S.C.A. § 77q(a)(1); Securities Exchange Act of 1934, §§ 10(b), 13, 15 U.S.C.A. §§ 78j(b), 78m; 17 C.F.R. §§ 210.1-01(a)(2), 210.4-01(a)(1), 240.10b-5, 240.13a, 249.308a.—*S.E.C. v. Caserta*, 75 F.Supp.2d 79.—Sec Reg 27.42, 60.28(11), 60.46.

E.D.N.Y. 1995. “Materiality,” within meaning of criminal procedure rule requiring defendant’s discovery request to be for documents which are material to preparation of defense, means more than that evidence in question bears some abstract logical relationship to issues in case. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—*U.S. v. Ashley*, 905 F.Supp. 1146.—Crim Law 627.6(2).

E.D.N.Y. 1994. In determining whether plaintiff has stated a claim for fraud, standard for “materiality” is whether or not reasonable man would attach importance to fact misrepresented in determining his choice of action in transaction in question.—*Moy v. Adelphi Institute, Inc.*, 866 F.Supp. 696.—Fraud 18.

E.D.N.Y. 1969. Under Securities and Exchange Commission rule that false statement in proxy statement must be material in order to be actionable, “materiality” means a fact or omission to which a reasonable man would attach importance in determining his choice of action in the transaction in

question. Securities Exchange Act of 1934, §§ 10(b), 14(a), 15 U.S.C.A. §§ 78j(b), 78n(a).—*Gerstle v. Gamble-Skogmo, Inc.*, 298 F.Supp. 66, modified 478 F.2d 1281, 24 A.L.R. Fed. 202.—Corp 198(3); Sec Reg 49.26(3).

S.D.N.Y. 2000. “Materiality,” for purposes of granting summary judgment when there is no genuine issue of material fact, is defined by the governing substantive law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Chiquita Intern. Ltd. v. Liverpool and London S.S. Protection and Indem. Ass’n Ltd.*, 124 F.Supp.2d 158.—Fed Civ Proc 2470.1.

S.D.N.Y. 1996. Test of “materiality” of false or misleading proxy solicitation is whether there is substantial likelihood that reasonable shareholder would consider misstatement or omission important in deciding how to vote; in case of omissions, issue is whether there is substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered total mix of information made available. 17 C.F.R. § 240.14a-9.—*Capital Real Estate Investors Tax Exempt Fund Ltd. Partnership v. Schwartzberg*, 917 F.Supp. 1050.—Sec Reg 49.26(3).

S.D.N.Y. 1992. “Materiality” of future events which may or not occur, such as merger, depend at any given time upon balancing of both probability that event will occur and anticipated magnitude of event in light of totality of company activity, for purposes of Rule 10b-5; because merger can be most important event in life of small company, information concerning merger can be material at earlier stage than would be the case with lesser transactions, even though mortality rate of mergers in such formative stages is high. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*S.E.C. v. Singer*, 786 F.Supp. 1158.—Sec Reg 60.28(13).

S.D.N.Y. 1984. For purposes of securities fraud, “materiality” is established when a reasonable man would attach importance to alleged omissions or misrepresentations in determining his course of action. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—*Jaksich v. Thomson McKinnon Securities, Inc.*, 582 F.Supp. 485.—Sec Reg 60.28(11).

S.D.N.Y. 1973. The basic task of “materiality” of misrepresentation in sale of stock is whether a reasonable man would attach importance to the fact misrepresented in determining his choice of action in transaction in question; material information need not be limited to information translatable into earnings. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Gordon v. Burr*, 366 F.Supp. 156, affirmed in part, reversed in part 506 F.2d 1080.—Sec Reg 60.46.

N.D. Ohio 1995. For purpose of determining whether court is required to revoke citizenship on ground that citizenship was procured by concealment of material fact or by willful misrepresentation, “materiality” hinges on whether the concealments or misrepresentations had a natural tendency to influence the decisions of the Immigration and Naturalization Service (INS). Immigration and Na-

tionality Act, § 340(a), 8 U.S.C.A. § 1451(a).—U.S. v. Lindert, 907 F.Supp. 1114.—Aliens 71(7).

N.D. Ohio 1993. Under Ohio statute permitting rescission of health and accident insurance policy due to fraudulent misrepresentation by policy applicant, test for “materiality” is not dependent upon claim made by insured, but is determined by analyzing the effect of the falsification on the underwriting decision. Ohio R.C. § 3923.14.—New York Life Ins. Co. v. Wittman, 813 F.Supp. 1287.—Insurance 3001, 3004.

E.D. Pa. 2001. In the context of securities fraud claims under § 10(b) and Rule 10b-5, “materiality” means information that would be important to a reasonable investor in making his or her investment decisions. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—In re Provident Financial Corp. Securities Litigation, 152 F.Supp.2d 814.—Sec Reg 60.28(11), 60.46.

E.D. Pa. 1992. “Materiality” under statute authorizing revocation of citizenship on grounds of concealment or misrepresentation is whether concealed or misrepresented fact had natural tendency to influence decisions of decision making body to which it was addressed. Immigration and Nationality Act, § 340(a), 8 U.S.C.A. § 1451(a).—U.S. v. Schiffer, 798 F.Supp. 1128.—Aliens 71(7).

E.D. Pa. 1958. Conduct which Congress intended to prevent by statute was willful submission to federal agencies of false statements calculated to induce agency reliance or action, irrespective of whether actual favorable agency action was, for other reasons, impossible; and test of “materiality” of false statement is intrinsic capabilities of statement itself, rather than possibility of actual attainment of its end as measured by collateral circumstances. 18 U.S.C.A. § 1001.—U.S. v. Quirk, 167 F.Supp. 462, affirmed 266 F.2d 26.—Fraud 68.10(4).

W.D. Pa. 1973. While “materiality” is one of cornerstones of violation of statute forbidding the giving of false testimony before grand jury, only requirement is that the question be material to the subject of grand jury investigation and evidence need not be material even to the main issue. 18 U.S.C.A. § 1623.—U. S. v. Crandall, 363 F.Supp. 648, affirmed 493 F.2d 1401, certiorari denied 95 S.Ct. 94, 419 U.S. 852, 42 L.Ed.2d 83, affirmed Ferri, Appeal of, 495 F.2d 1368, affirmed 495 F.2d 1369.—Perj 11(7).

D. Puerto Rico 1999. In the context of discovery, “materiality” means that the defendant must demonstrate that the material sought would enable him to alter substantially the quantum of proof in his favor. Fed. Rules Cr. Proc. Rule 16, 18 U.S.C.A.—U.S. v. Santana, 83 F.Supp.2d 224.—Crim Law 627.5(1).

W.D. Tenn. 1999. For purposes of the Lanham Act, “materiality” is defined in terms of a statement’s propensity to have some effect on consumers’ purchasing decisions. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).—Federal Exp.

Corp. v. U.S. Postal Service, 40 F.Supp.2d 943.—Trade Reg 870(1).

E.D. Va. 1999. For purposes of determining whether a corporate insider has a duty to disclose information under federal securities fraud laws, the basic test of “materiality” of the information is whether a reasonable man would attach importance in determining his choice of action in the transaction in question. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Byelick v. Vivadelli, 79 F.Supp.2d 610.—Sec Reg 60.28(11).

E.D. Va. 1996. In guilty plea context, defendant establishes “materiality” of undisclosed *Brady/Giglio* evidence by showing reasonable probability that, but for failure to disclose evidence, defendant would have refused to plead and would have opted for trial.—Banks v. U.S., 920 F.Supp. 688.—Crim Law 700(3).

D. Virgin Islands 1999. “Materiality” of false statements submitted to United States agency, for purposes of statute prohibiting knowingly making false statements in matter within jurisdiction of United States agency, means that statements were capable of influencing matter within jurisdiction of federal agency. 18 U.S.C.A. § 1001.—U.S. v. Koenig, 53 F.Supp.2d 803, affirmed in part, reversed in part 281 F.3d 225.—Fraud 68.10(4).

S.D. W. Va. 1993. Test for “materiality” under federal securities laws is whether there is substantial likelihood that reasonable shareholder would consider information important in deciding how to vote. Securities Exchange Act of 1934, §§ 10(b), 32, 15 U.S.C.A. §§ 78j(b), 78ff.—U.S. v. ReBrook, 837 F.Supp. 162, affirmed in part, reversed in part 58 F.3d 961, certiorari denied 116 S.Ct. 431, 516 U.S. 970, 133 L.Ed.2d 346.—Sec Reg 60.28(11), 60.46.

W.D. Wis. 1974. Word “materiality” within meaning of rule providing for discovery of books, papers, documents, etc., on a showing of materiality to preparation of the defense means something more than bare allegations that the items sought are material. Fed. Rules Crim. Proc. rule 16(b), 18 U.S.C.A.—U. S. v. Wahlin, 384 F.Supp. 43.—Crim Law 627.6(1).

9th Cir. BAP (Cal.) 1999. Omissions or misstatements concerning property that would not be property of estate may not meet “materiality” requirement of “false oath” exception to discharge. Bankr. Code, 11 U.S.C.A. § 727(a)(4).—In re Wills, 243 B.R. 58.—Bankr 3283.

Bkrtcy. E.D. Cal. 1998. Disclosure’s “materiality,” for purposes of determining whether debtor’s discharge should be denied on false oath grounds, is not determined by whether it may financially prejudice the estate or creditors. Bankr. Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Hoblitzell, 223 B.R. 211.—Bankr 3282.1.

Bkrtcy. D. Del. 1996. In context of Delaware common-law fraud requirement that defendant made false representation of material fact, “materiality” is measured by objective test which asks

whether reasonable person would attach importance to the misrepresentation in determining choice of action in the transaction in question.—*Matter of Phoenix Ltd.*, 198 B.R. 78, reversed 213 B.R. 57, on remand *Poole v. Dugdale*, 1998 WL 51851.—*Fraud 18.*

Bkrtcy.C.D.Ill. 2002. In the context of the exception to discharge provision, the test for “materiality” of the subject matter of a false oath is whether it bears a relationship to the bankrupt’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4)(A).—*In re Wilson*, 290 B.R. 333.—*Bankr 3282.1.*

Bkrtcy.C.D.Ill. 2002. In the context of the exception to discharge provision, the “materiality” of an omission is not lessened by the fact that the assets transferred may have been exempt. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4)(A).—*In re Wilson*, 290 B.R. 333.—*Bankr 3282.1.*

Bkrtcy.N.D.Ill. 2002. Test for “materiality” of debtor’s false oath, for denial-of-discharge purposes, is whether the oath bears a relationship to debtor’s business transactions or estate, or concerns discovery of debtor’s assets or business dealings, or existence and disposition of debtor’s property. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4).—*In re Bostrom*, 286 B.R. 352, affirmed *Stathopoulos v. Bostrom*, 2003 WL 403138.—*Bankr 3282.1.*

Bkrtcy.N.D.Ill. 2002. Chapter 7 debtors’ numerous omissions from their bankruptcy schedules and statements, in failing to disclose as assets three parcels of real property located in Florida as well as any income for debtor-wife, and in significantly understating debtor-husband’s income by not including his substantial bonuses, satisfied the “materiality” prong of “false oath” discharge exception. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4).—*In re Bostrom*, 286 B.R. 352, affirmed *Stathopoulos v. Bostrom*, 2003 WL 403138.—*Bankr 3284.*

Bkrtcy.N.D.Ill. 1995. Allegations that had president of corporate tenant known that alleged owner of leased premises was only contract purchaser, president would have talked to seller and learned that contract was in default and would have dropped restaurant deal and not paid his share of security deposit which was lost was sufficient allegation of “materiality” and “reliance,” for purposes of fraud action under Illinois law.—*In re Van Quach*, 187 B.R. 615.—*Fraud 43, 46.*

Bkrtcy.D.Minn. 2001. For purposes of summary judgment, “materiality” is measured by whether a given fact might affect the outcome of the suit under the governing law. *Fed.Rules Bankr.Proc. Rule 7056*, 11 U.S.C.A.; *Fed.Rules Civ.Proc.Rule 56(c)*, 28 U.S.C.A.—*In re de Jesus*, 268 B.R. 185.—*Bankr 2164.1.*

Bkrtcy.E.D.N.Y. 1999. “Materiality,” in context of “false oath” discharge exception, is not properly about relevancy; it is only about demonstrable matters of importance, as direct function of what trustee could actually have distributed to creditors if full

and accurate disclosure of assets and liabilities had been timely made by debtor. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4).—*In re Murray*, 238 B.R. 523, reversed and remanded 249 B.R. 223.—*Bankr 3282.1.*

Bkrtcy.E.D.N.Y. 1991. Even if any one false oath or omission of Chapter 7 debtor from schedules or statement of affairs were in itself too immaterial to warrant denial of discharge, the multitude of discrepancies, falsehoods, and omissions, taken collectively, were of sufficient “materiality” to bar discharge; debtor failed to reveal his interest in corporation, amount of money in checking account at time of involuntary petition, value of insurance policies, participation in certain business, and ownership of car, claiming that property was of little or no value or exempt. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4)(A).—*In re Sapru*, 127 B.R. 306.—*Bankr 3283, 3284.*

Bkrtcy.S.D.N.Y. 1994. “Materiality” of false oath is established, for bankruptcy discharge purposes, if oath bears relationship to debtor’s business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of debtor’s property. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4).—*In re Sicari*, 187 B.R. 861.—*Bankr 3282.1.*

Bkrtcy.S.D.N.Y. 1982. Under Bankruptcy Code, “materiality” of false oath is not determined by ascertaining its detrimental effect on creditors, but, rather, “materiality” depends on whether inquiry bears relationship to debtor’s business transactions or his estate or concerns discovery of assets, business dealings and relations of bankrupt, existence and disposition of his property and debts and the like. *Bankr.Code*, 11 U.S.C.A. § 727(a)(4).—*In re Gugliada*, 20 B.R. 524.—*Bankr 3282.1.*

Bkrtcy.D.N.D. 1993. Concept of “materiality,” within meaning of Bankruptcy Code provision excepting from discharge debt obtained by materially false statement of debtor’s financial condition, includes both objective and subjective components. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Kerbaugh*, 162 B.R. 255.—*Bankr 3353(12.15).*

CIT 2001. “Materiality,” for purposes of action for introducing merchandise into commerce of United States by means of false representation, is determined without regard to whether importer’s false statement to Customs actually misled Customs, or whether Customs actually relied on false statement; rather, statement is material if it has potential significantly to affect integrity or operation of importation process as a whole. *Tariff Act of 1930*, § 592, 19 U.S.C.A. § 1592.—*U.S. v. Nippon Miniature Bearing Corp.*, 155 F.Supp.2d 701.—*Cust Dut 125.*

Cl.Ct. 1992. “Materiality,” within meaning of Claims Court rule providing that summary judgment is properly granted when no genuine issue as to any material fact exists in case and moving party is entitled to judgment as matter of law, is defined with reference to the governing substantive law. *U.S.Cl.Ct.Rule 56*, 28 U.S.C.A.—*Kesler v. U.S.*, 25 Cl.Ct. 189.—*Fed Cts 1120.*

Alaska 1990. "Materiality" of nondisclosure in life policy application is defined by risk assumed at time the policy is issued, not by hindsight causal analysis of subsequent death.—*Petersen v. Mutual Life Ins. Co. of New York*, 803 P.2d 406.—*Insurance* 3003(4).

Cal.App. 2 Dist. 1995. Relationship of evidence to provable matter is question of "materiality"; evidence that does not relate to matter in issue is "immaterial." West's Ann.Cal.Evid.Code § 210.—*People v. Torrez*, 37 Cal.Rptr.2d 712, 31 Cal.App.4th 1084, rehearing denied, and review denied.—*Crim Law* 382.

Cal.App. 2 Dist. 1970. Condemnees did not show "good cause" or "materiality" justifying "subpoena duces tecum" served on condemnor's appraiser, whom condemnor did not intend to call as a witness, to require appraiser to bring his appraisal report showing value of property, where affidavit of condemnees merely stated that information was in possession of appraiser and was not elsewhere available, and that requested information was of value in establishing value of property. West's Ann.Code Civ.Proc. §§ 1985, 2036(a).—*People ex rel. Dept. Pub. Wks. v. Younger*, 86 Cal.Rptr. 237, 5 Cal.App.3d 575.—*Witn* 16.

Colo.App. 1983. In regard to claim that representations in the sale of stock were in violation of the Colorado Securities Act, an objective or relevancy test of "materiality" is proper, under which a misstatement or omission is material if an investor "might" consider it important; thus, the trial court erred in instructing jury that a misrepresentation is material if a reasonable and prudent investor "would" be affected or influenced by it. C.R.S. 11-51-125(1).—*Goss v. Clutch Exchange, Inc.*, 677 P.2d 355, affirmed 701 P.2d 33.—*Sec Reg* 278, 309.

Conn. 2000. Mere possibility that item of undisclosed evidence might have helped the defense or might have affected outcome of trial does not establish "materiality" under *Brady*.—*State v. Ortiz*, 747 A.2d 487, 252 Conn. 533.—*Crim Law* 700(2.1).

Conn.App. 1999. Test of "materiality" of non-disclosed exculpatory evidence requires that there be a reasonable probability that, had evidence been disclosed to the defense, result of proceeding would have been different. U.S.C.A. Const.Amend. 14; C.G.S.A. § 54-86c.—*Quintana v. Commissioner of Correction*, 739 A.2d 701, 55 Conn.App. 426, certification denied 743 A.2d 614, 252 Conn. 904.—*Crim Law* 700(2.1).

Conn.App. 1999. Mere possibility that item of undisclosed evidence might have helped the defense or might have affected the outcome does not establish "materiality" with respect to *Brady* claim. U.S.C.A. Const.Amend. 14; C.G.S.A. § 54-86c.—*Quintana v. Commissioner of Correction*, 739 A.2d 701, 55 Conn.App. 426, certification denied 743 A.2d 614, 252 Conn. 904.—*Crim Law* 700(2.1).

Conn.App. 1999. Measure of "materiality" of undisclosed evidence that forms basis of claim of denial of due process under State Constitution is whether there is reasonable probability that, had

evidence been disclosed to defense, the result of proceeding would have been different. C.G.S.A. Const. Art. 1, § 8.—*State v. Spillane*, 737 A.2d 479, 54 Conn.App. 201, certification granted in part 740 A.2d 866, 251 Conn. 914, certification denied 740 A.2d 867, 251 Conn. 915, reversed 770 A.2d 898, 255 Conn. 746, reconsideration granted 778 A.2d 101, 257 Conn. 750, on remand 793 A.2d 1228, 69 Conn.App. 336.—*Const Law* 268(5); *Crim Law* 700(2.1).

Conn.App. 1998. For purposes of determining whether state's loss of evidence violated defendant's due process rights, the measure of "materiality" is whether there is a reasonable probability that, had the evidence been available to the defense at trial, the result of the proceeding would have been different. C.G.S.A. Const. Art. 1, § 8.—*State v. Jones*, 718 A.2d 470, 50 Conn.App. 338, certification denied 734 A.2d 568, 248 Conn. 915.—*Const Law* 268(5).

Conn.App. 1997. Mere possibility that item of undisclosed information might have helped defense, or might have affected outcome of trial, does not establish "materiality" within meaning of *Brady*.—*State v. Connelly*, 700 A.2d 694, 46 Conn.App. 486, certification denied 713 A.2d 829, 244 Conn. 907, certification denied 713 A.2d 829, 244 Conn. 908, certiorari denied 119 S.Ct. 245, 525 U.S. 907, 142 L.Ed.2d 201, denial of post-conviction relief affirmed *Connelly v. Commissioner of Correction*, 780 A.2d 890, 258 Conn. 374.—*Crim Law* 700(2.1).

Del.Supr. 1988. "Relevancy" consists of both "materiality", which looks to the relation between the propositions for which the evidence is offered and the ultimate facts in the case, and of "probative value", which is concerned with the tendency of the evidence to establish the proposition that it is offered to prove. Rules of Evid., Rule 401, Del. C.Ann.—*Getz v. State*, 538 A.2d 726, appeal after remand 582 A.2d 935, subsequent mandamus proceeding *Petition of Getz*, 583 A.2d 660, post-conviction relief denied 1994 WL 465543, affirmed 651 A.2d 787, habeas corpus denied 1999 WL 127247.—*Crim Law* 338(1).

Del.Ch. 2002. For purposes of establishing whether a director received a material benefit when determining if the business judgment presumptions have been rebutted and the entire fairness standard applies to a challenged transaction, "materiality" means that the alleged benefit was significant enough in the context of the director's economic circumstances, as to have made it improbable that the director could perform her fiduciary duties to the shareholders without being influenced by her overriding personal interest.—*Orman v. Cullman*, 794 A.2d 5.—*Corp* 320(11).

Fla.App. 2 Dist. 1996. Vendor's liability to purchaser to disclose material facts affecting value of property not readily observable by purchaser, under Florida Supreme Court *Johnson* decision, is measured against whether vendor possessed knowledge of material facts affecting value of property which were not disclosed to unsuspecting buyer, and not degree of damage to vendor caused by undisclosed

problem; test for determining “materiality” of fact in transactions of this nature is whether fact substantially affects value of property.—*Dorton v. Jensen*, 676 So.2d 437.—*Ven & Pur* 36(2).

Ga. 1996. “Materiality” of undisclosed evidence about immunity agreements with material prosecution witnesses is not established by mere possibility that item of undisclosed information might have helped defense, or might have affected outcome of the trial.—*Dinning v. State*, 470 S.E.2d 431, 266 Ga. 694, appeal after remand 485 S.E.2d 464, 267 Ga. 879.—*Crim Law* 700(4).

Ga.App. 1940. Generally it is sufficient in indictment for perjury to charge that testimony alleged to have been false was in relation to a matter “material” to point or question in issue without setting forth in detail facts showing how such testimony was material, and one test of “materiality” is whether alleged false statements could have influenced decision as to the question at issue. Code 1933, § 26-4001.—*Darnell v. State*, 11 S.E.2d 692, 63 Ga.App. 582.—*Perj* 25(5).

Ga.App. 1908. The test of “materiality” is whether the statement made could have influenced the tribunal upon the question at issue before it. Any statements made in a judicial proceeding for the purpose of affecting the decision and upon which the judge acts, are material.—*McLaren v. State*, 62 S.E. 138, 4 Ga.App. 643.

Idaho 1998. As element of fraud, “materiality” refers to importance of misrepresentation in determining plaintiff’s course of action.—*Watts v. Krebs*, 962 P.2d 387, 131 Idaho 616.—*Fraud* 18.

Idaho 1991. Measure of prosecutor’s duty to disclose evidence is materiality of information at issue; determination of “materiality” is guided by whether information tends to create reasonable doubt by guilt or is otherwise of substantial value to defense such that elementary fairness requires it to be disclosed even without specific request.—*State v. Rhoades*, 822 P.2d 960, 121 Idaho 63, on rehearing, certiorari denied 113 S.Ct. 962, 506 U.S. 1047, 122 L.Ed.2d 119.—*Crim Law* 700(2.1).

Idaho 1991. Test by which to measure prosecutor’s duty to disclose evidence is materiality of the information at issue, and determination of “materiality” is guided by whether information tends to create reasonable doubt about guilt.—*State v. Rhoades*, 820 P.2d 665, 120 Idaho 795, certiorari denied 112 S.Ct. 2970, 504 U.S. 987, 119 L.Ed.2d 590, denial of post-conviction relief affirmed 11 P.3d 481, 134 Idaho 862, rehearing denied, denial of post-conviction relief dismissed 17 P.3d 243, 135 Idaho 299, rehearing pending, and rehearing denied.—*Crim Law* 700(2.1).

Idaho App. 1994. On *Brady* challenge to guilty plea, test of “materiality” is whether there is reasonable probability that, but for state’s failure to produce information, defendant would not have entered plea but instead would have insisted on going to trial; this is not subjective investigation as to what particular defendant and his counsel actually would have decided, but objective assessment,

based in part upon persuasiveness of withheld information.—*State v. Gardner*, 885 P.2d 1144, 126 Idaho 428.—*Crim Law* 700(3).

Ill.App. 1 Dist. 1994. “Materiality” or “fact of consequence” refers to relationship a particular proposition bears to ultimate determination of action.—*Spencer v. Wandolowski*, 201 Ill.Dec. 422, 636 N.E.2d 854, 264 Ill.App.3d 611, appeal denied 205 Ill.Dec. 187, 642 N.E.2d 1304, 157 Ill.2d 523.—*Evid* 143.

Ill.App. 1 Dist. 1993. For purposes of determining whether life insurance applicant’s misrepresentation materially affected insurer’s acceptance of risk so as to allow insurer to refuse to pay benefits under policy, “materiality” is determined by whether reasonably careful and intelligent persons would regard facts as stated to substantially increase chances of event insured against, so as to cause rejection of application. Ill.Rev.Stat.1991, ch. 73, ¶ 766.—*Small v. Prudential Life Ins. Co.*, 186 Ill. Dec. 841, 617 N.E.2d 80, 246 Ill.App.3d 893, appeal denied 190 Ill.Dec. 911, 622 N.E.2d 1228, 152 Ill.2d 581.—*Insurance* 3003(4).

Ill.App. 1 Dist. 1979. Omitted evidence which creates a reasonable doubt of guilt that did not otherwise exist is “material,” but the mere possibility that evidence might have aided the defense, or might have affected the outcome of the trial, does not establish “materiality” in the constitutional sense.—*People v. Hardy*, 26 Ill.Dec. 212, 387 N.E.2d 1042, 70 Ill.App.3d 351.—*Crim Law* 700(2.1).

Ill.App. 2 Dist. 1995. “Materiality” of false statement, for purposes of perjury prosecution, is derived from relationship between proposition of allegedly false statement and issues in case, and test of materiality for allegedly perjured statement is whether statement tends to prove or disprove issue in case; statement is material when it influenced, or could have influenced, trier of fact. S.H.A. 720 ILCS 5/32-2.—*People v. Acevedo*, 211 Ill.Dec. 926, 656 N.E.2d 118, 275 Ill.App.3d 420, appeal denied 214 Ill.Dec. 861, 662 N.E.2d 427, 165 Ill.2d 554.—*Perj* 11(2).

Ill.App. 4 Dist. 1993. “Materiality” relates to propriety of proposition to be established, whereas “relevancy” relates to propriety of proof to establish that proposition.—*Yamnitz v. William J. Diestelhorst Co., Inc.*, 190 Ill.Dec. 593, 621 N.E.2d 1046, 251 Ill.App.3d 244.—*Evid* 99, 143.

Ill.App. 5 Dist. 1983. For purpose of perjury statute, “materiality” exists if the allegedly false statement would or could influence the trier of fact in its deliberations. S.H.A. ch. 38, ¶ 32-2(a).—*People v. Toolen*, 72 Ill.Dec. 41, 451 N.E.2d 1364, 116 Ill.App.3d 632.—*Perj* 11(2).

Ind. 1997. For purposes of *Brady* obligation to disclose material favorable to accused, “materiality” entails showing that there is reasonable probability that in event of disclosure result of proceeding would have been different.—*Woods v. State*, 677 N.E.2d 499.—*Crim Law* 700(2.1).

Ind. 1941. The test of “materiality” of misrepresentation in application for life policy is not that insurer was influenced, but that the facts if truly stated might reasonably have influenced insurer in deciding whether to reject or accept the risk.—*New York Life Ins. Co. v. Kuhlenschmidt*, 33 N.E.2d 340, 218 Ind. 404, 135 A.L.R. 397.—*Insurance* 3001.

Ind. 1941. Whether undisclosed ailments of applicant for life policy were so serious as to put a medical examiner on guard for further specific inquiry and examination before risk would be accepted, affected “materiality” of misrepresentations concealing such ailments.—*New York Life Ins. Co. v. Kuhlenschmidt*, 33 N.E.2d 340, 218 Ind. 404, 135 A.L.R. 397.—*Insurance* 3003(9).

Ind.App. 1995. “Materiality” for purposes of perjury charge is that which is reasonably calculated to mislead investigation. West’s A.I.C. 35–44–2–1(a)(1).—*Daniels v. State*, 658 N.E.2d 121.—*Perj* 11(2).

Ind.App. 2 Div. 1967. “Materiality” of evidence deals with relationship between issues of the case and fact which the evidence tends to prove, whereas “relevancy” deals with requirement that evidence logically tends to prove a material fact.—*Azimow’s Estate v. Azimow*, 230 N.E.2d 450, 141 Ind.App. 529.—*Evid* 99, 143.

Iowa 1974. “Materiality” of evidence refers to pertinency of the offered evidence to the issue in dispute.—*Vine Street Corp. v. City of Council Bluffs*, 220 N.W.2d 860.—*Evid* 143.

Kan. 1976. “Materiality” is largely a question of law; it requires that the facts proved be significant under the substantive law of the case and properly at issue.—*State v. Faulkner*, 551 P.2d 1247, 220 Kan. 153.—*Crim Law* 382.

La. 1990. Concept of “materiality” to be applied in pretrial proceeding concerning discoverability of alleged *Brady* material was to be given its ordinary meaning in law of evidence. U.S.C.A. Const.Amend. 14.—*State v. Ortiz*, 567 So.2d 81, on remand 573 So.2d 531, writ granted 576 So.2d 42.—*Crim Law* 627.5(1), 700(2.1).

La.App. 2 Cir. 1996. “Materiality,” for purposes of informed consent, means that person in plaintiff’s position would attach significance to particular risk, and does not require expert testimony.—*Roberts v. Cox*, 669 So.2d 633, 28,094 (La.App. 2 Cir. 2/28/96).—*Health* 906, 926.

La.App. 4 Cir. 1991. “Materiality” of evidence is shown, for purpose of requirement that prosecution disclose evidence favorable to defendant if material to his guilt, where there is reasonable probability that outcome of trial would have been different if evidence had been disclosed. LSA-Cr.P. arts. 718, 729.2.—*State v. Johnson*, 575 So.2d 417, writ denied 578 So.2d 131, writ denied 678 So.2d 29, 1994-1346 (La. 8/23/96), habeas corpus denied *Johnson v. Cain*, 1998 WL 814626.—*Crim Law* 700(2.1).

La.App. 5 Cir. 1994. Mere possibility that evidence undisclosed before trial may have been help-

ful to defense does not establish “materiality”; there must be reasonable probability of different outcome. LSA-Cr.P. arts. 718, 723; U.S.C.A. Const.Amend. 5, 6.—*State v. Wilson*, 631 So.2d 1213, 93-617 (La.App. 5 Cir. 1/25/94), writ denied 644 So.2d 1046, 1994-0476 (La. 11/4/94).—*Crim Law* 627.6(1), 627.7(4).

La.App. 5 Cir. 1991. Mere possibility that evidence undisclosed before trial may have been helpful to defendant is insufficient to establish “materiality” within meaning of *Brady*; rather, there must be reasonable probability that evidence would cause different outcome.—*State v. Myers*, 584 So.2d 242, writ denied 588 So.2d 105, certiorari denied 112 S.Ct. 1945, 504 U.S. 912, 118 L.Ed.2d 550, writ denied 588 So.2d 105, habeas corpus denied *Myers v. Cain*, 2001 WL 1218763, affirmed 55 Fed.Appx. 716, certiorari denied 123 S.Ct. 1947.—*Crim Law* 700(2.1).

Me. 1973. “Materiality” of offered evidence goes to weight of such evidence in helping to resolve controverted issue.—*Towle v. Aube*, 310 A.2d 259.—*Evid* 143.

Md. 2001. In case where there is no false testimony but prosecution nonetheless fails to disclose favorable evidence, standard for “materiality” of evidence, in connection with *Brady* claim, is whether there is a reasonable probability that, had evidence been disclosed to the defense, the result of proceeding would have been different, with a “reasonable probability” being a probability sufficient to undermine confidence in outcome.—*Wilson v. State*, 768 A.2d 675, 363 Md. 333.—*Crim Law* 700(2.1).

Md. 1939. The question of “materiality” of misrepresentations in application for life policy is not whether disability of any sort is proved to have existed at time of making application, but whether misrepresentation of true facts would reasonably have affected determination of acceptability of risk.—*Schloss v. Metropolitan Life Ins. Co.*, 9 A.2d 244, 177 Md. 191.—*Insurance* 3003(4).

Md.App. 1991. Promise on part of insurance broker to secure three-year coverage at guaranteed annual premium was “material” to insured’s decision to obtain insurance through broker, and supported claim for fraud, if promise was made to make broker’s proposal more attractive and actually had that effect; mere fact that broker’s proposal was otherwise superior to those of rival brokers, or that insured had not asked for premium guarantee, did not preclude finding of “materiality.”—*Twelve Knotts Ltd. Partnership v. Fireman’s Fund Ins. Co.*, 589 A.2d 105, 87 Md.App. 88.—*Insurance* 1672.

Md.App. 1983. “Materiality,” as opposed to relevancy, looks to relation between proposition for which evidence is offered and issues in case; if evidence is offered to prove proposition which is not matter in issue, or probative of matter in issue, evidence is properly rejected as being immaterial.—*Weiner v. State*, 464 A.2d 1096, 55 Md.App. 548, certiorari granted 468 A.2d 1352, 298 Md. 192, certiorari granted 468 A.2d 328, affirmed 489 A.2d 1119, 302 Md. 550.—*Crim Law* 382.

Mass. 1966. "Materiality" in respect of perjury means relevance in sense that answer might tend in reasonable degree to affect some aspect or result of the inquiry.—*Com. v. Giles*, 213 N.E.2d 476, 350 Mass. 102.—*Perj* 11(2).

Mass.App.Ct. 1991. For purpose of claim of misrepresentation, "materiality" means whether reasonable person would attach importance to fact not disclosed in determining choice of action in transaction in question.—*Zimmerman v. Kent*, 575 N.E.2d 70, 31 Mass.App.Ct. 72.—*Fraud* 18.

Mass.App.Ct. 1985. "Materiality," for purposes of perjury requirement that false testimony must be given on material matter, means relevance in sense that answer might tend in reasonable degree to affect some aspect or result of inquiry in which testimony was given.—*Com. v. Leavitt*, 484 N.E.2d 1032, 21 Mass.App.Ct. 84, review denied 487 N.E.2d 855, 396 Mass. 1105.—*Perj* 11(8).

Mich. 1998. "Materiality" is the requirement that the proffered evidence be related to any fact that is of consequence to the action. MRE 401, 402.—*People v. Crawford*, 582 N.W.2d 785, 458 Mich. 376.—*Crim Law* 382.

Mich. 1995. "Materiality" of evidence, for purpose of relevancy determinations, is requirement that proffered evidence be related to any fact that is of consequence to action, i.e., fact that is of consequence to action is material fact. MRE 401.—*People v. Mills*, 537 N.W.2d 909, 450 Mich. 61, modified 539 N.W.2d 504, 450 Mich. 1212.—*Crim Law* 382.

Mich. 1995. For purposes of relevancy rule, "materiality" does not mean that proffered evidence must be directed at element of crime or applicable defense. MRE 401.—*People v. Mills*, 537 N.W.2d 909, 450 Mich. 61, modified 539 N.W.2d 504, 450 Mich. 1212.—*Crim Law* 382.

Mich. 1982. Term "materiality," in statute providing that insurance policy may be avoided on grounds of material misrepresentation, requires only that misrepresentation affect insurer's risk, and no causal relation need be shown between misrepresentation and loss insured against. M.C.L.A. § 500.2218.—*In re Certified Question*, 318 N.W.2d 456, 413 Mich. 57.—*Insurance* 2958.

Mo. 1952. Sole fact that evidence is logically relevant does not require its admission, but in addition evidence must have probative value, over and above logical relevancy, which is usually referred to as "legal relevancy" or "materiality".—*Conley v. Kaney*, 250 S.W.2d 350.—*Evid* 99.

Mo.App. S.D. 2002. "Materiality," for purposes of determining whether variance between an indictment or information and jury instructions is fatal, exists when the variance between an indictment or information and jury instructions affects whether the defendant received adequate notice.—*State v. Hagan*, 79 S.W.3d 447.—*Crim Law* 1172.6.

Mo.App. 1976. For purposes of prosecution for perjury, "materiality" of testimony on which perjury is assigned looks to relationship between proposi-

tions for which evidence is offered and issues in the case; therefore, it is necessary that State prove falsity of statement in prior proceeding and prove what issue or point in question former proceeding was, so trial court can ascertain the materiality of alleged false statement to issue or point in question. Section 557.010 RSMo 1969, V.A.M.S.—*State v. Roberson*, 543 S.W.2d 817.—*Perj* 11(2), 29(2).

Neb. 1998. "Materiality" of terms of court-ordered reunification plan exists, and parent's failure to comply with plan may result in termination of parental rights, when parent's noncompliance results in continued condition which was basis for adjudication and which is deleterious to child expected to benefit from parental compliance with plan. Neb.Rev.St. § 43-292.—*In re Interest of Constance G.*, 575 N.W.2d 133, 254 Neb. 96.—*Infants* 155.

Neb. 1997. "Materiality" looks to relation between the propositions for which evidence is offered and issues in case; if evidence is offered to help prove proposition which is not matter in issue, evidence is immaterial; what is "in issue," that is, within range of litigated controversy, is determined mainly by pleadings, read in light of rules of pleading and controlled by the substantive law.—*State v. Merrill*, 566 N.W.2d 742, 252 Neb. 736.—*Crim Law* 382.

Neb. 1997. "Materiality" regarding parental rehabilitative plan exists when parent's noncompliance with plan results in continued condition which was basis for adjudication of juvenile court jurisdiction over child and which is deleterious to a child expected to benefit from parental compliance with plan. Neb.Rev.St. §§ 43-247(3)(a), 43-292(6).—*In re Interest of Joshua M.*, 558 N.W.2d 548, 251 Neb. 614.—*Infants* 155.

Neb. 1994. "Materiality" has been explained as referring to newly discovered evidence which is so potent that by strengthening evidence already offered, new trial would probably result in different verdict. Neb.Rev.St. § 29-2101.—*State v. McCormick*, 518 N.W.2d 133, 246 Neb. 271.—*Crim Law* 940.

Neb.App. 1998. "Materiality" pertains to the relation between the proposition for which the evidence is offered and the issues in the case; if the evidence is offered to help prove a proposition which is not a matter in issue, the evidence is immaterial.—*State v. Harrold*, 585 N.W.2d 532, 7 Neb.App. 842, review sustained, reversed 593 N.W.2d 299, 256 Neb. 829, certiorari denied 120 S.Ct. 992, 528 U.S. 1142, 145 L.Ed.2d 939.—*Crim Law* 382.

N.M. 1942. The terms "relevancy", "competency" and "materiality" are frequently used conjunctively in such way as to suggest that they are synonymous, but a matter may be relevant to the issues and yet incompetent and inadmissible as evidence because of established rules of evidence such as the rule which excludes hearsay, the rule which requires the production of the best evidence which is within the power of the party to produce, and other positive rules of evidence.—*Chiordi v.*

Jernigan, 129 P.2d 640, 46 N.M. 396.—Evid 99, 143, 148.

N.Y.A.D. 2 Dept. 1995. In context of *Brady* claim, where evidence in question was not specifically requested by defense, constitutional error occurs only if undisclosed evidence was material in sense that there is reasonable probability that, had evidence been disclosed, result of proceeding would have been different; mere possibility that undisclosed evidence, which was not requested, might have helped defense or affected outcome of trial does not establish “materiality” in constitutional sense.—*People v. Figueroa*, 625 N.Y.S.2d 49, 213 A.D.2d 669, appeal denied 629 N.Y.S.2d 732, 85 N.Y.2d 972, 653 N.E.2d 628, error coram nobis denied by 708 N.Y.S.2d 303, 272 A.D.2d 341, leave to appeal dismissed 747 N.Y.S.2d 415, 98 N.Y.2d 696, 776 N.E.2d 4.—Crim Law 700(2.1).

N.Y.Sup. 1994. If prosecutor has improperly failed to disclose exculpatory material, defendant may have guilty plea set aside if court determines that information would have materially affected defendant’s decision to plead guilty; “materiality” in this context is showing that there is reasonable probability that had exculpatory material been disclosed as required, defendant’s attorney would have recommended against plea or defendant, notwithstanding counsel’s advice, would have insisted on proceeding to trial.—*People v. Benard*, 620 N.Y.S.2d 242, 163 Misc.2d 176.—Crim Law 274(4).

N.Y.Sup. 1945. “Pertinency” within rule that libelous statements in course of judicial proceedings are privileged if pertinent to the litigation, refers to such matters as are relevant and material to the litigation and is synonymous with “materiality”.—*Brown v. Mack*, 56 N.Y.S.2d 910, 185 Misc. 368.—Libel 38(1).

N.Y.Sup. 1932. False swearing with corrupt intent does not constitute perjury, in absence of “materiality,” which involves question whether something was said that might influence jury.—*People v. Kresel*, 264 N.Y.S. 464, 147 Misc. 241.—Perj 11(2).

N.D. 2001. If the Workers Compensation Bureau is seeking reimbursement for benefits paid pursuant to a false claim or false statement by claimant, the “materiality” element of the Bureau’s reimbursement claim requires the Bureau to prove the false claim or false statement caused the benefits to be paid in error. NDCC 65–05–33.—*Aalund v. North Dakota Workers Compensation Bureau*, 622 N.W.2d 210, 2001 ND 32.—Work Comp 771.

Ohio Com.Pl. 1966. “Relevancy” and “competency” have to do with admissibility while “materiality” has to do with weight.—*Nord v. McMillan*, 215 N.E.2d 919, 6 Ohio Misc. 25, 35 O.O.2d 106.—Evid 99, 143, 148.

Or. 1995. Traditional concept of “relevance,” which is merged into definition of rule governing relevant evidence, concerns relation between facts in evidence and conclusions to be drawn from them, while “materiality” concerns relation between proposition for which evidence is offered and issues

in case. Rules of Evid., Rule 401.—*State v. Guzek*, 906 P.2d 272, 322 Or. 245.—Crim Law 338(1), 382.

Or.App. 1984. Evidence, including testimony of two grand jurors that defendant’s sworn denials to them closed off avenues of inquiry, not only as to defendant’s conduct being investigated in official misconduct context but as to that of others who were subject to grand jury investigation, was enough to show “materiality” of defendant’s testimony under perjury statute. ORS 162.055, 162.055(2).—*State v. Wood*, 678 P.2d 1238, 67 Or.App. 218, review denied 681 P.2d 134, 297 Or. 124.—Perj 33(6).

Or.App. 1980. Concept of “materiality,” for purpose of perjury conviction for material false testimony, involves inclusion of certain questions or propositions within range of allowable proof in lawsuit. ORS 162.065.—*State v. Darnell*, 619 P.2d 1321, 49 Or.App. 461.—Perj 11(2).

Pa. 1998. For *Brady* purposes, “materiality” is satisfied when there is a reasonable probability of a different result if the evidence had been disclosed.—*Com. v. Counterman*, 719 A.2d 284, 553 Pa. 370, reargument denied, certiorari denied *Counterman v. Pennsylvania*, 120 S.Ct. 97, 528 U.S. 836, 145 L.Ed.2d 82.—Crim Law 700(2.1).

R.I. 1972. “Materiality” of risk may be said to be the significance a reasonable person, in what physician knows or should know is patient’s position, would attach to disclosed risk or risks in deciding whether to submit or not to submit to surgery or treatment.—*Wilkinson v. Vesey*, 295 A.2d 676, 110 R.I. 606, 69 A.L.R.3d 1202.—Health 906, 908.

S.C.App. 1995. In determining materiality of evidence suppressed by prosecution, constitutional standard of “materiality” is met only if omitted evidence creates reasonable doubt that did not otherwise exist; mere possibility that item of undisclosed information might have helped defense, or might have affected outcome of trial does not establish materiality. U.S.C.A. Const.Amend. 14.—*State v. Freeman*, 459 S.E.2d 867, 319 S.C. 110.—Crim Law 700(2.1).

Tenn. 1995. For *Brady* purposes, “materiality” means that which undermines confidence in the outcome of the trial.—*Hartman v. State*, 896 S.W.2d 94, appeal after remand 2000 WL 631400, reversed 42 S.W.3d 44.—Crim Law 700(2.1).

Tex.Crim.App. 1980. Definition of “material” in statute defining crime of aggravated perjury was not unconstitutionally vague in that issue of “materiality” was not whether false statement in fact affected the course or outcome of the proceedings, but whether it was such testimony as could have affected course or outcome of such proceedings, and thus “materiality” referred to misstatements having some substantial potential for obstructing justice and excluded utterly trivial falsifications. V.T.C.A., Penal Code §§ 37.03, 37.04, 37.04(a, c).—*Mitchell v. State*, 608 S.W.2d 226.—Perj 2.

Tex.Crim.App. 1900. "Materiality," with reference to evidence, does not have the same significance as "relevancy."—*Pangburn v. State*, 56 S.W. 72.

Tex.App.—Houston [1 Dist.] 1992. Showing that lost evidence might have been favorable does not meet "materiality" standard for due process violation; defendant must make affirmative showing that evidence was favorable and material.—*Hebert v. State*, 836 S.W.2d 252, petition for discretionary review refused.—Const Law 268(5).

Tex.App.—Houston [14 Dist.] 2002. Testimony that could have affected the course of the proceeding is "material," for purposes of offense of aggravated perjury, when such testimony, if believed by the finder of fact, bears directly on the credibility of the States' witnesses; "materiality" refers to statements having some substantial potential for obstructing justice and excludes utterly trivial falsifications. V.T.C.A., Penal Code §§ 37.02–37.04.—*Steen v. State*, 78 S.W.3d 516, petition for discretionary review refused.—Perj 11(9).

Tex.App.—Houston [14 Dist.] 1982. Trial court must permit defendant's discovery of evidence in possession of State only if evidence sought is material to his defense; mere possibility that item of undisclosed information might have helped defense, or might have affected outcome of trial, does not establish "materiality" in constitutional sense. *Vernon's Ann. Texas C.C.P. art. 39.14*.—*Young v. State*, 644 S.W.2d 18, petition for discretionary review refused.—Crim Law 627.6(1).

Tex.Civ.App.—Corpus Christi 1980. For purposes of constituting actionable fraud, misrepresentation must relate to a material fact; in order to show "materiality," proof must be made that the misrepresentation induced complaining party to act.—*Manges v. Astra Bar, Inc.*, 596 S.W.2d 605, ref. n.r.e.—Fraud 18, 50.

Va. 1996. Mere possibility that undisclosed information might have helped defense or might have affected outcome of trial does not establish "materiality" for purposes of proving *Brady* violation. U.S.C.A. Const.Amend. 14.—*Goins v. Com.*, 470 S.E.2d 114, 251 Va. 442, certiorari denied 117 S.Ct. 222, 519 U.S. 887, 136 L.Ed.2d 154, habeas corpus dismissed by 52 F.Supp.2d 638, appeal dismissed 226 F.3d 312, certiorari denied 121 S.Ct. 649, 531 U.S. 1046, 148 L.Ed.2d 553.—Crim Law 700(2.1).

Va. 1975. Term "materiality" in context of adverse presumption resulting from unexplained non-production of a material witness, means that person's testimony has a certain or probable bearing on a proper determination of the case.—*Neeley v. Johnson*, 211 S.E.2d 100, 215 Va. 565.—Evid 77(1).

Wash. 1993. Mere possibility that item of undisclosed evidence might have helped defendant or might have affected outcome of trial does not establish "materiality" for due process purposes. U.S.C.A. Const.Amend. 5, 14.—*State v. Blackwell*, 845 P.2d 1017, 120 Wash.2d 822.—Const Law 268(5).

Wash. 1986. If defendant requests further disclosure, he must show that requested information is

material to preparation of defense, and mere possibility that item of undisclosed evidence might have helped defense or might have affected outcome of trial does not establish "materiality" in the constitutional sense.—*State v. Mak*, 718 P.2d 407, 105 Wash.2d 692, reconsideration denied, certiorari denied 107 S.Ct. 599, 479 U.S. 995, 93 L.Ed.2d 599, habeas corpus granted *Kwan Fai Mak v. Blodgett*, 754 F.Supp. 1490, affirmed and remanded 970 F.2d 614, certiorari denied 113 S.Ct. 1363, 507 U.S. 951, 122 L.Ed.2d 742, affirmed and remanded 972 F.2d 1340, certiorari denied 113 S.Ct. 1363, 507 U.S. 951, 122 L.Ed.2d 742.—Crim Law 627.8(1).

Wash.App. Div. 3 1996. Mere possibility that item of undisclosed evidence might have helped defense or might have affected outcome of trial does not establish "materiality" in constitutional sense. U.S.C.A. Const.Amend. 6.—*State v. Castellanos*, 916 P.2d 983, 82 Wash.App. 204, review granted 928 P.2d 415, 130 Wash.2d 1008, affirmed 935 P.2d 1353, 132 Wash.2d 94.—Crim Law 700(2.1).

Wis. 1959. If false statements as to identity of driver given by owner and alleged driver prior to trial, at variance with their testimony, are used to impeach such witnesses in action against owner, alleged driver and automobile liability insurer for injuries to third person resulting from operation of automobile, such statements would meet test of "materiality" essential to constitute breach of policy co-operation condition.—*Kurz v. Collins*, 95 N.W.2d 365, 6 Wis.2d 538.—Insurance 3207.

MATERIALITY AND RELEVANCY

C.A.9 (Cal.) 1971. Tests of "materiality and relevancy" for internal revenue subpoena is essentially same as is applied to grand jury investigations, that is, whether inspections sought would throw light upon correctness of taxpayer's returns. 26 U.S.C.A. (I.R.C.1954) §§ 7602–7604.—*U. S. v. Ryan*, 455 F.2d 728, 20 A.L.R. Fed. 719.—Int Rev 4496.

MATERIALITY OF MISREPRESENTATIONS

D.Mass. 1997. Under Massachusetts law concerning voiding or rescinding insurance policy for misrepresentations in applications, "materiality of misrepresentations" is defined as something the knowledge or ignorance of which would naturally influence underwriter's judgment in making the contract at all, or in fixing the premium.—*Northwestern Mut. Life Ins. Co. v. Iannacchino*, 950 F.Supp. 28.—Insurance 2958.

MATERIALITY OF RISK

La.App. 2 Cir. 1996. "Materiality of risk" to patient depends on existence and nature of risk and likelihood of its occurrence, which requires expert testimony, and also means that person in patient's position would attach significance to particular risk, which does not require expert testimony.—*Yuska v. HCA Health Services of Louisiana, Inc.*, 684 So.2d 1093, 28,878 (La.App. 2 Cir. 12/11/96).—Health 926.

N.J.Super.A.D. 1998. "Prudent patient" or "materiality of risk" standard is used to determine whether physician has complied with disclosure requirements, and under this standard, physician must disclose all information material to reasonably prudent patient's decision to undergo proposed treatment; test of materiality is whether reasonable patient, in what physician knows or should know to be patient's position, would be likely to attach significance to risk or cluster of risks in deciding whether to forego proposed therapy or to submit to it.—*Bennett v. Surgidev Corp.*, 710 A.2d 1023, 311 N.J.Super. 567.—Health 906.

N.J.Super.A.D. 1992. "Prudent patient" or "materiality of risk" standard for informed consent requires physician to disclose all risks which would materially affect patient's decision to undergo medical procedure; sufficiency of disclosure requires that disclosure be viewed through mind of patient, not physician.—*Febus v. Barot*, 616 A.2d 933, 260 N.J.Super. 322.—Health 906.

N.J.Super.L. 1994. Under "prudent patient" or "materiality of risk" standard of disclosure for physician to patient, question is what prudent person in patient's position would have decided if suitably informed of all material perils and risks; if prudent patient, once fully informed, would have decided not to undergo suggested course of treatment, causation between failure to inform and patient's injuries is established.—*Herrera v. Atlantic City Surgical Group, P.A.*, 649 A.2d 637, 277 N.J.Super. 260.—Health 906.

MATERIALITY OF RISK STANDARD

N.J.Super.A.D. 1997. Under "prudent patient standard," also known as "materiality of risk standard," which is applied to determine whether physician has complied with disclosure requirements, physician must disclose all information material to reasonably prudent patient's treatment decision.—*Posta v. Chung-Loy*, 703 A.2d 368, 306 N.J.Super. 182, certification denied 713 A.2d 500, 154 N.J. 609.—Health 906.

MATERIALITY REQUIREMENT

Cal.App. 1 Dist. 1985. "Materiality requirement" for admission of other-crimes evidence was satisfied, where ultimate fact to be proved was defendant's state of mind when he shot victim, prosecution theory was that killing was premeditated with malice aforethought, and defendant asserted that he acted in self-defense. *West's Ann.Cal. Evid.Code* § 1101.—*People v. Pertsoni*, 218 Cal. Rptr. 350, 172 Cal.App.3d 369, review denied, denial of habeas corpus affirmed *Pertsoni v. Ylst*, 979 F.2d 855, certiorari denied 113 S.Ct. 3008, 509 U.S. 909, 125 L.Ed.2d 699, habeas corpus dismissed 1994 WL 80802, affirmed 47 F.3d 1175, certiorari denied 116 S.Ct. 123, 516 U.S. 840, 133 L.Ed.2d 73, rehearing denied 116 S.Ct. 584, 516 U.S. 1018, 133 L.Ed.2d 506.—Crim Law 369.2(4).

MATERIAL LOSS

Vt. 1998. Department of Corrections, with respect to expenses incurred in extradition of defen-

dant from jurisdiction to which he had escaped, had suffered a "material loss" entitling the Department to restitution; the cost of defendant's extradition was a direct consequence of his escape and constituted the type of special damages that could be easily ascertained. 13 V.S.A. § 7043.—*State v. Lewis*, 711 A.2d 669, 167 Vt. 533.—Sent & Pun 2154.

MATERIALLY

C.A.8 (Minn.) 1999. Minnesota Human Rights Act's (MHRA) definition of "disability" as impairment "materially" limiting one or more major activities would be treated the same as Americans with Disabilities Act's (ADA) definition of "disability" as impairment "substantially" limiting such activities, inasmuch as the difference was merely semantic. Americans with Disabilities Act of 1990, § 3(2), 42 U.S.C.A. § 12102(2); M.S.A. § 363.01, subd. 13.—*Weber v. Strippit, Inc.*, 186 F.3d 907, certiorari denied 120 S.Ct. 794, 528 U.S. 1078, 145 L.Ed.2d 670.—Civil R 107(1).

C.A.2 (N.Y.) 2001. For purposes of sentence enhancement, perjury is committed "willfully" when it is made with the specific purpose of obstructing justice, and "materially" when it is material to the proceeding in which it is given.—*U.S. v. Ben-Shimon*, 249 F.3d 98.—Sent & Pun 761.

S.D.Ga. 1968. Where secured creditor's rights are not "materially" affected the wage earner plan does not "deal with" the creditor and may be put into operation without his consent. *Bankr.Act*, § 652(1), 11 U.S.C.A. § 1052(1).—*In re Terry*, 294 F.Supp. 253, affirmed *Terry v. Colonial Stores Emp. Credit Union of Atlanta*, 411 F.2d 553.—*Bankr* 3708(8).

Bkrtcy.S.D.Fla. 1999. Language in amendment to declaration of condominium, providing that condominium association reserved the right to separately meter any commercial unit and to holder of that unit responsible for its own separately metered utilities as well as for its undivided interest in association's budget, "materially" and "adversely" impacted upon prospective purchasers' agreement to purchase unit, and entitled prospective purchasers to rescind purchase agreement in accordance with Florida statute, where prospective purchasers, as result of amendment, would be liable, at minimum, for an additional \$12,168.00 in utility charges for each year they owned condominium unit. *West's F.S.A.* § 718.503.—*In re Suncoast East Associates*, 241 B.R. 476.—Condo 4.

Cal.App. 2 Dist. 1911. A court may at any time correct a judgment as to immaterial matters occasioned by inadvertence; but this right does not exist where such amendment materially affects the rights of litigants objecting thereto, using the word "materially" to mean affecting the rights of objecting litigants.—*Calkins v. Monroe*, 119 P. 680, 17 Cal. App. 324.—Judgm 303.

Ind. 1940. In action for injuries sustained when defendant's automobile skidded into path of plaintiff's on-coming automobile, instruction quoting statute as to speed limit and authorizing finding for

defendant, if plaintiff violated speed laws, and such violation "materially" contributed to the injury, was proper as against contention that there could be no such causal connection between speed of plaintiff's automobile and collision, as to constitute contributory negligence which would defeat plaintiff's action. *Burns' Ann.St. § 47-516.—Cousins v. Glassburn*, 24 N.E.2d 1013, 216 Ind. 431.—*Autos* 246(58).

Ind. 1940. In action for injuries sustained in automobile collision, use of word "materially" instead of "proximately," in an instruction quoting statute as to speed limits and authorizing verdict for defendant if plaintiff violated such laws and such violation "materially contributed" to injury, was not reversible error, since word "materially" means in an important manner or degree, substantially, and word "contribute" means to help to cause or to furnish some aid in causing the result, and words used excluded idea of remote causal connection between negligence and accident. *Burns' Ann.St. § 47-516. (See Burns' Ann.St. § 47-1801 et seq.)—Cousins v. Glassburn*, 24 N.E.2d 1013, 216 Ind. 431.—*App & E* 1064.4.

Ind.App. 1942. A court's failure to use word "proximately" in defining contributory negligence is not error, if other words such as "materially", which exclude idea of remote, indirect or insignificant causal connection between negligence and accident are used, as word "materially" means "in an important manner or degree, substantially", and to "contribute" is to help to cause or furnish some aid in causing result.—*Earle v. Porter*, 40 N.E.2d 381, 112 Ind.App. 71.—*Neglig* 453.

Ind.App. 2 Div. 1905. An instruction that one may recover for injury the proximate result of the negligence of another, provided he himself did not contribute thereto materially by negligence, is not erroneous because of the use of the word "materially".—*Indianapolis & M. Rapid Transit Co. v. Edwards*, 74 N.E. 533, 36 Ind.App. 202.—*Neglig* 1741.

Iowa 1909. In instructing upon a city's liability for damage to property by the overflow of a stream by changing the grade of a street, it is usual to instruct that the volume of water must have been "materially and unduly" increased; "unduly" meaning disproportionately, and not being synonymous with "materially".—*Walters v. City of Marshalltown*, 120 N.W. 1046, 145 Iowa 457, 26 L.R.A.N.S. 199.—*Mun Corp* 845(6).

Mich. 1892. "Materially" is defined as substantially, essentially, really.—*President, etc., of Grand Rapids Hydraulic Co. v. American Fire Ins. Co.*, 53 N.W. 538, 93 Mich. 396.

Minn. 1977. Under section of Environmental Rights Act providing remedy against a defendant whose conduct materially adversely affects environment, the word "materially" carries same effect and meaning as the word "substantially." M.S.A. § 116B.02, subds. 4, 5.—*Minnesota Public Interest Research Group v. White Bear Rod and Gun Club*, 257 N.W.2d 762.—*Environ Law* 20.

Mo.App. 1923. An objection that an instruction "that grounds which would justify the partnership in discharging plaintiff are willful disobedience of a lawful order of said partners which materially affected the interests of said partnership" was erroneous in the use of the word "materially" was highly technical, because such word as used meant that the disobedience must in some substantial way affect the interests of the partnership.—*Duerkob v. Brown*, 255 S.W. 962.—*Mast & S* 44.

Mo.App. 1907. The error, if any, in the admission of a deposition, on the ground that the party offering it had failed to show the nonresidence of the witness, was harmless, where his testimony only tended to prove a fact otherwise established by competent and uncontroverted evidence, and the error did not "materially" affect the merits of the action, and the court could not, under *Rev.St.1899, § 865, Mo.St.Ann. § 1062, p. 1352 (Repealed Laws 1943, p. 353)*, reverse the judgment on that ground.—*O'Keefe v. United Rys. Co. of St. Louis*, 101 S.W. 1144, 124 Mo.App. 613.

N.Y.A.D. 4 Dept. 1994. Check whose date was altered from "2/28/89" to "2/28/1990" was not "materially" "altered" and, thus, drawee bank was not negligent in paying the item in accordance with its original tenor, and presenting bank did not breach its warranty of presentment; in issuing check, drawer undertook to pay payee or subsequent holder check amount on demand on or after February 28, 1989, and February 28, 1990 was on or after that date. *McKinney's Uniform Commercial Code §§ 3-104(2)(b), 3-304 comment, 3-407 comment, 3-413(2), 3-417(1)(c), (2)(c), 4-207(1)(c), (2)(c).*—*Davis Auction House, Inc. v. Ontario Nat. Bank*, 609 N.Y.S.2d 707, 201 A.D.2d 878.—*Banks* 148(1), 149.

N.C. 1946. "Materially" means in an important regard or degree; substantially.—*State v. Bowen*, 39 S.E.2d 740, 226 N.C. 601.

Pa.Com.Pl. 1962. In deciding the question of jurisdiction of this court, the test is whether the construction job in question "substantially" or "materially" affects interstate commerce or whether its effect is merely incidental.—*Upper Moreland School Dist. Authority v. Building and Const. Trades Council of Philadelphia & Vicinity*, 79 Montg. 98.—*Labor* 922.

Tex.Civ.App. 1909. In an action to enjoin a public nuisance resulting from a dam, an instruction that before plaintiff could recover the jury must find that the dam caused sewage, etc., to accumulate above the dam so as to actually pollute the water and render the river "materially" unwholesome or offensive to those residing nearby, or in some "material" respect added to such offensive condition, was not erroneous as tending to mislead the jury, and as imposing a greater degree of proof than required.—*Boyd v. Schreiner*, 116 S.W. 100, writ refused.—*Nuis* 75.

Va. 1992. Instructing jury that school board was required to show that contractor "substantially" or "materially" breached construction contract in order to be entitled to terminate contract was revers-

ible error in action arising from contract's termination, where contract permitted termination upon "substantial" violation of contractual provisions; term "material" was not synonymous with "substantial."—*Spotsylvania County School Bd. v. Seaboard Sur. Co.*, 415 S.E.2d 120, 243 Va. 202, on remand *Sherman Const. Corp. v. Spotsylvania County School Bd.*, 1992 WL 884981.—*Schools* 86(2).

Va. 1938. Evidence, showing that taxpayer's land was assessed "materially" higher per acre than lands equally well adapted for general farming properties and of equal fertility in other districts of county, did not entitle taxpayer to relief under statute which gives relief only where the valuation is "grossly" in excess of and out of proportion to the assessed value of other acreage lands generally in the county, since material discrimination is not necessarily gross discrimination. *Acts* 1936, c. 435.—*Griffin v. Norfolk County*, 196 S.E. 698, 170 Va. 370.—*Tax* 499.

Wash.App. Div. 3 1978. As used in statute defining unlawful imprisonment as a restraint which interferes "substantially" with the victim's liberty, the term "substantially" means "really" or "materially" as contrasted with a petty annoyance, a slight inconvenience, or an imaginary conflict. *RCWA* 9A.40.010.—*State v. Robinson*, 582 P.2d 580, 20 Wash.App. 882, review granted 91 Wash.2d 1014, affirmed 597 P.2d 892, 92 Wash.2d 357.—*False Imp* 43.

MATERIALLY ADVANCE

D.R.I. 1988. Interlocutory appeal of order granting leave to amend complaint to include state common-law tort claim alleging retaliatory discharge by employer in addition to age discrimination claim would not "materially advance" ultimate termination of litigation, and thus, certification of interlocutory order for prompt appeal would not be granted, where both counts asserted in complaint had issues in common with one another, any additional discovery regarding retaliatory discharge claim would not be so substantial as to justify interlocutory appeal, and it would be more expedient to incur several extra days of trial regarding retaliatory discharge claim than to have immediate appellate review.—*Cummins v. EG & G Sealol, Inc.*, 697 F.Supp. 64.—*Fed Cts* 660.20.

MATERIALLY ADVANCE TERMINATION OF LITIGATION

N.D.Ill. 1987. District court would certify its own interlocutory order, holding that Bankruptcy Code did not permit filing of class proofs of claim, where issue presented was clearly one of law, only handful of cases had addressed issue, and resolution of issue would have significant impact on debtor's bankruptcy proceedings; under the circumstances, immediate appeal would "materially advance termination of litigation." 28 U.S.C.A. § 1292(b).—*In re American Reserve Corp.*, 71 B.R. 303.—*Bankr* 3772.

MATERIALLY ADVERSE

C.A.7 (Ind.) 2001. To state a Title VII claim for retaliation, an employee must show she has suffered some materially adverse action, and "materially adverse" for such purpose means more than a mere inconvenience or alteration of job responsibilities. *Civil Rights Act of 1964*, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Gawley v. Indiana University*, 276 F.3d 301.—*Mast & S* 30(6.10).

C.A.2 (N.Y.) 2001. In context of a Title VII claim for disparate treatment or retaliation, for a change in working conditions to be "materially adverse," so as to constitute an adverse employment action, the change must be more disruptive than a mere inconvenience or an alteration of job responsibilities. *Civil Rights Act of 1964*, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.—*Weeks v. New York State (Div. of Parole)*, 273 F.3d 76.—*Civil R* 153; *Mast & S* 30(6.10).

C.A.7 (Wis.) 1989. School district's reassignment of more-than-65-year-old principal to dual principalship more distant from home was not "materially adverse" change in employment, such as might be actionable under the Age Discrimination in Employment Act, where evidence established that dual principalships were not unusual within district, and reassignment was accompanied by new two-year employment contract and merit pay increase. *Age Discrimination in Employment Act of 1967*, § 2 et seq., 29 U.S.C.A. § 621 et seq.—*Spring v. Sheboygan Area School Dist.*, 865 F.2d 883.—*Civil R* 171.

S.D.N.Y. 2002. For employment decision to be "materially adverse," as required for prima facie case of race discrimination under Title VII, change must be more disruptive than mere inconvenience or alteration of job responsibilities. *Civil Rights Act of 1964*, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.—*Hill v. Taconic Developmental Disabilities Services Office*, 181 F.Supp.2d 303, vacated 57 Fed.Appx. 9.—*Civil R* 142.

S.D.N.Y. 2002. Examples of "materially adverse" changes in employment, which would support prima facie case of race discrimination under Title VII, include negative evaluation letters, termination, demotion, less distinguished title, loss of benefits, and significantly diminished material responsibilities. *Civil Rights Act of 1964*, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.—*Hill v. Taconic Developmental Disabilities Services Office*, 181 F.Supp.2d 303, vacated 57 Fed.Appx. 9.—*Civil R* 142.

S.D.N.Y. 1988. Creditor's interests were not "materially adverse" to those of other creditors, so as to disqualify creditor from voting for candidate for Chapter 7 trustee and as a result operate to preclude or void that creditor's voting of proxy for another creditor; there was no allegation that the creditor had received preference, and claim of materially adverse interest was based solely on fact that if the creditor got more from the debtor's estate, insider creditors would get less. *Bankr. Code*, 11 U.S.C.A. § 702(a)(2); *Rules Bankr.Proc.*

Rule 2003(b)(3), 11 U.S.C.A.—*In re Cohoes Indus. Terminal, Inc.*, 90 B.R. 67.—Bankr 3004.1.

N.D.Ohio 2002. Adverse employment action, as would support prima facie case of retaliation under Title VII, is “materially adverse” change in terms of plaintiff’s employment; to be materially adverse, change must be matter of real significance, such as termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, significantly diminished material responsibilities, or other indices unique to a particular situation. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Roelen v. Akron Beacon Journal*, 199 F.Supp.2d 685.—Mast & S 30(6.10).

N.D.Ohio 2001. In determining whether employment action was “materially adverse,” for purposes of Title VII’s anti-retaliation provision, court should consider following factors: termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to particular situation. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Dysert v. Whirlpool Corp.*, 167 F.Supp.2d 967.—Mast & S 30(6.10).

N.D.Ohio 2000. Employee who was unable to continue to operate mechanical press brake due to knee condition did not suffer from “materially adverse” employment action due to fact that employer gave him less desirable duties that paid employee same salary during same work hours, and thus employer did not retaliate against employee for filing charges with Equal Employment Opportunity Commission (EEOC) in violation of Title VII after employer refused to allow him to operate hydraulic press brake. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Vass v. The Riester & Thesmacher Co.*, 79 F.Supp.2d 853.—Mast & S 30(6.10).

S.D.Ohio 1996. Change in terms of employment is “materially adverse,” for purposes of Title VII race discrimination and retaliation claims, when employee received significantly diminished material responsibilities, including termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, or other indices that might be unique to particular situation. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Joiner v. Ohio Dept. of Transp.*, 949 F.Supp. 562.—Civil R 142; Mast & S 30(6.10).

Bkrtcy.M.D.Fla. 1999. Undersecured creditor which had waived \$5 million of its secured claim in attempt to make itself eligible to elect Chapter 7 trustee still held interest “materially adverse” to those of other unsecured creditors, and was not eligible to vote for Chapter 7 trustee, where creditor remained the only secured creditor of estate and continued to seek to protect its secured status while others challenged that status. Bankr.Code, 11 U.S.C.A. § 702.—*In re Jotan, Inc.*, 236 B.R. 79.—Bankr 3004.1.

Bkrtcy.N.D.Ill. 2000. Principal’s interests were “materially adverse” to those of his bankrupt securities brokerage firm, for purpose of deciding whether attorney’s prior representation of firm, in litigation arising out of trading activities of one of its brokers, should disqualify attorney from representing principal in firm’s Chapter 7 case or in related proceedings, given that the Securities Investor Protection Corporation (SIPC), in its capacity as trustee, contemplated suit against principal for failing to adequately supervise this broker, and also anticipated naming principal as defendant in avoidance action for recovery of certain transfers.—*Securities Investor Protection Corp. v. R.D. Kushnir & Co.*, 246 B.R. 582.—Atty & C 21.5(6).

Bkrtcy.N.D.Ill. 1990. For purpose of determining whether creditor may vote for candidate for trustee, creditor’s mere opposition to claim of a single other creditor would not have effect of minimizing distributions from estate as a whole, and thus such interest would not qualify as “materially adverse.” Bankr.Code, 11 U.S.C.A. § 702(a)(2).—*In re Klein*, 110 B.R. 862, affirmed in part, reversed in part 119 B.R. 971, appeal dismissed 940 F.2d 1075.—Bankr 3004.1.

Bkrtcy.D.Neb. 2000. Bankruptcy professional holds interest “materially adverse” to estate, creditors or equity security holders, and may be denied compensation on that basis, if he/she (1) possesses or asserts any economic interest that would tend to lessen value of estate, or that would create either an actual or potential dispute in which estate is rival claimant, or (2) possesses a predisposition under circumstances that renders such a bias against estate. Bankr.Code, 11 U.S.C.A. §§ 101(14)(E), 328(c).—*In re Weaver Potato Chip Co., Inc.*, 243 B.R. 737.—Bankr 3029.1.

Bkrtcy.M.D.N.C. 1996. Phrase “materially adverse,” as used in bankruptcy statute disqualifying as debtor’s counsel any entity with “materially adverse” interest, is to be broadly interpreted to encompass both actual and potential conflicts of interest. Bankr.Code, 11 U.S.C.A. § 327(a).—*In re Rabex Amuru of North Carolina, Inc.*, 198 B.R. 892.—Atty & C 21.5(6).

MATERIALLY ADVERSE CHANGE

C.A.7 (Ind.) 1993. Employee does not suffer “materially adverse change” in terms and conditions of employment, such as is required to support age discrimination claim under the ADEA, if change results in mere inconvenience or alteration of job responsibilities. Age Discrimination in Employment Act of 1967, §§ 2–17, 29 U.S.C.A. §§ 621–634.—*Crady v. Liberty Nat. Bank and Trust Co. of Indiana*, 993 F.2d 132.—Civil R 168.1.

N.D.Ill. 1998. For purposes of employment discrimination action, “materially adverse change” in terms and conditions of employment must be more disruptive than a mere inconvenience or an alteration of job responsibilities; materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a mate-

rial loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.—*Jenkins-Allen v. Powell Duffryn Terminals, Inc.*, 18 F.Supp.2d 885.—Civil R 141.

E.D.N.Y. 2001. “Materially adverse change” in terms and conditions of employment constituting “adverse employment action” as required to show retaliation in violation of Title VII might be indicated by termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to particular situation. Civil Rights Act of 1964, § 704(a), as amended, 42 U.S.C.A. § 2000e-3(a).—*Ruggieri v. Harrington*, 146 F.Supp.2d 202.—Mast & S 30(6.10).

S.D.N.Y. 2002. Plaintiff sustains adverse employment action, as would support prima facie case of discrimination under the ADA, if he or she endures “materially adverse change” in terms and conditions of employment; to be “materially adverse,” change in working conditions must be more disruptive than mere inconvenience or alteration of job responsibilities. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Stalter v. Board of Co-op. Educational Services of Rockland County*, 235 F.Supp.2d 323.—Civil R 173.1.

S.D.N.Y. 2002. “Materially adverse change” in terms and conditions of employment, which constitutes adverse employment action, for purposes of prima facie case under the ADA, might be indicated by termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to particular situation. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Stalter v. Board of Co-op. Educational Services of Rockland County*, 235 F.Supp.2d 323.—Civil R 173.1.

S.D.N.Y. 1999. “Materially adverse change” in terms and conditions of employment, such as would give rise to ADA claim, includes changes in employment which significantly reduce job duties or prestige. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Valentine v. Standard & Poor's*, 50 F.Supp.2d 262, affirmed 205 F.3d 1327.—Civil R 173.1.

MATERIALLY ADVERSE EMPLOYMENT ACTION

C.A.7 (Ill.) 1999. A “materially adverse employment action,” which an employee must demonstrate in an ADA retaliation action, includes readily quantifiable losses such as loss or reduction of pay or monetary benefits, but it can encompass many other forms of adversity. Americans with Disabilities Act of 1990, §§ 102(a), 503, 42 U.S.C.A. §§ 12112(a), 12203.—*Silk v. City of Chicago*, 194 F.3d 788.—Mast & S 30(6.10).

C.A.7 (Ill.) 1999. Alleged incidents of harassment against police officer arising from his inability to work night shifts, when considered cumulatively, did not constitute “materially adverse employment action,” and thus did not create hostile environment in violation of ADA, assuming such claim was cognizable; officer received every accommodation for his sleep apnea that he sought and continued to do his job without impediment. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Silk v. City of Chicago*, 194 F.3d 788.—Civil R 145.

C.A.7 (Ind.) 1998. Even assuming that civilian employee with the Department of the Army could utilize a “continuing violations” theory in order to place before the court alleged retaliatory acts occurring outside the 30-day window allowed to federal sector employees under Title VII, none of these alleged instances of retaliation, either in isolation or in tandem, appeared to rise to level of “materially adverse employment action” required under Title VII; at most, employee established that she was given two counseling statements, both of which stopped short of disciplining her, but which did admonish her to improve her performance. Civil Rights Act of 1964, §§ 703(a), 704(a), as amended, 42 U.S.C.A. §§ 2000e-2(a), 2000e-3(a).—*Sweeney v. West*, 149 F.3d 550.—Armed S 27.

C.A.1 (Me.) 1996. State did not retaliate against probation officers in violation of FLSA when, following judicial determination that officers were subject to FLSA's overtime requirements, it refused to negotiate side agreement with them that would increase their base salaries, as it had done with other types of employees following judicial determination that FLSA applied to state employers; state's action was not “materially adverse employment action,” since collective bargaining agreement provision relating to non-standard workweek relieved state of any obligation to dicker in event of change in officers' FLSA status, and eliminated any realistic expectation that officers might have had as to side agreement. Fair Labor Standards Act of 1938, § 15(a)(3), 29 U.S.C.A. § 215(a)(3).—*Blackie v. State of Me.*, 75 F.3d 716.—Courts 55.

C.A.1 (Me.) 1996. Typically, for employer to take “materially adverse employment action” against employee, for purposes of FLSA retaliation action, employer must either: (1) take something of consequence from employee such as discharging or demoting employee, reducing employee's salary, or divesting employee of significant responsibilities, or (2) withhold from employee an accouterment of employment relationship, such as failing to follow customary practice of considering employee for promotion after particular period of service. Fair Labor Standards Act of 1938, § 15(a)(3), 29 U.S.C.A. § 215(a)(3).—*Blackie v. State of Me.*, 75 F.3d 716.—Mast & S 30(6.10).

C.A.7 (Wis.) 2001. Female school custodian who alleged that she had been victim of gender discrimination, but who had not been disciplined, demoted, or terminated, had not been denied wage or employee benefit increases or given less opportu-

nity for such increases, and had not had her job responsibilities reduced or made to perform more menial tasks, did not suffer a “materially adverse employment action” sufficient to support Title VII sex discrimination claim, even though some of challenged actions may have been harassing in nature. Civil Rights Act of 1964, § 703(a)(1), as amended, 42 U.S.C.A. § 2000e-2(a)(1).—Haugerud v. Amery School Dist., 259 F.3d 678.—Civil R 165.

N.D.Ill. 1997. “Materially adverse employment action,” for purposes of establishing prima facie case of discrimination under Age Discrimination in Employment Act (ADEA), can include such actions as termination of employment, demotion evidenced by decrease in wage or salary, less distinguished title, material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to particular situation. Age Discrimination in Employment Act of 1967, §§ 2-17, as amended, 29 U.S.C.A. §§ 621-634.—Behnia v. Shapiro, 961 F.Supp. 1234.—Civil R 168.1, 170.

MATERIALLY ADVERSE INTEREST

N.D.Ill. 1990. Creditor, which at time of election of Chapter 7 trustee, has prospective ability to enhance his recovery at estate’s expense holds “materially adverse interest” to estate for purposes of determining that creditor’s eligibility to vote for trustee. Bankr.Code, 11 U.S.C.A. § 702(a).—In re Klein, 119 B.R. 971, appeal dismissed 940 F.2d 1075.—Bankr 3004.1.

MATERIALLY ADVERSE JOB ACTION

S.D.N.Y. 2002. Lateral transfer does not rise to the level of a “materially adverse job action,” for purposes of the Age Discrimination in Employment Act (ADEA), unless it results in a change in responsibilities so significant as to constitute a setback in the plaintiff’s career. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.—Johnson v. Eastchester Union Free School Dist., 211 F.Supp.2d 514.—Civil R 168.1.

MATERIALLY ADVERSELY AFFECTS

Minn. 1997. In determining whether conduct “materially adversely affects” environment or is likely to do so, as required for relief under Minnesota Environmental Rights Act (MERA), five non-exclusive factors should be considered, not all of which must be met: quality and severity of any adverse effects; whether affected resources are rare, unique, endangered, or have historical significance; any long-term adverse effects on natural resources, including whether resources are easily replaced; any significant consequential effect on other natural resources; and whether affected resources are significantly increasing or decreasing in number, considering direct and consequential impacts of proposed action. M.S.A. § 116B.02, subd. 5.—State by Schaller v. County of Blue Earth, 563 N.W.2d 260, rehearing denied.—Environ Law 20.

MATERIALLY AFFECTED

Tex.App.—Houston [1 Dist.] 2001. Outcome of an election is “materially affected” when a different and correct result would have been reached in the absence of the irregularities.—Price v. Lewis, 45 S.W.3d 215.—Elections 227(1).

Tex.App.—Houston [1 Dist.] 2000. The outcome of an election is “materially affected” by Election Code violations, as would require that outcome be set aside, when a different and correct result would have been reached in the absence of the irregularities.—Olsen v. Cooper, 24 S.W.3d 608, rehearing overruled.—Elections 227(1).

MATERIALLY AFFECTED BY REASON OF HIS MILITARY SERVICE

U.S.N.C. 1943. The findings of North Carolina trial court, denying continuance to defendant who was in Washington in the military service, that defendant willfully attempted to evade determination of issues, that defendant was not acting in good faith, and that defendant had had ample time to properly prepare his defense, sufficiently evidenced opinion of the court that defendant’s defense was not “materially affected by reason of his military service” within Soldiers’ and Sailors’ Civil Relief Act. Soldiers’ and Sailors’ Civil Relief Act of 1940, § 201, 50 U.S.C.A.Appendix, § 521.—Boone v. Lightner, 63 S.Ct. 1223, 319 U.S. 561, 87 L.Ed. 1587, rehearing denied 64 S.Ct. 26, 320 U.S. 809, 88 L.Ed. 489.—Armed S 34.9(4).

U.S.N.C. 1943. Evidence including showing that prompt action was necessary to protect trust fund, that depositions of lawyer-trustee who was in military service in Washington showed that he had no defense to accounting suit, and that he had been granted continuance to procure necessary counsel, justified refusal of further continuance when case was again called for trial, on ground that trustee’s ability to conduct his defense was not “materially affected by reason of his military service” within Soldiers’ and Sailors’ Civil Relief Act. Soldiers’ and Sailors’ Civil Relief Act of 1940, § 201, 50 U.S.C.A.Appendix, § 521.—Boone v. Lightner, 63 S.Ct. 1223, 319 U.S. 561, 87 L.Ed. 1587, rehearing denied 64 S.Ct. 26, 320 U.S. 809, 88 L.Ed. 489.—Armed S 34.9(4).

Ill.App. 4 Dist. 1946. Where party is an important witness and he is absent at remote place in military service, and there is no other person known by those present cognizant of disputed facts, his ability to prosecute the action or to conduct his defense is “materially affected by reason of his military service” within Soldiers’ and Sailors’ Civil Relief Act so as to be entitled to a stay of proceedings. Soldiers’ and Sailors’ Civil Relief Act of 1940, §§ 100, 201, 50 U.S.C.A.Appendix, §§ 510, 521.—Everingham v. Stringer, 69 N.E.2d 348, 329 Ill.App. 490.—Armed S 34.2(5).

Ill.App. 4 Dist. 1946. Where determinative issue in forcible entry and detainer was the term of the lease which has been made by defendant’s husband who was absent in military service, husband’s ability to conduct his defense was “materially affected by

reason of his military service” and hence refusal to stay the action because of his absence was an abuse of discretion. *Soldiers’ and Sailors’ Civil Relief Act of 1940*, §§ 100, 201, 50 U.S.C.A. Appendix, §§ 510, 521.—*Everingham v. Stringer*, 69 N.E.2d 348, 329 Ill.App. 490.—*Armed S* 34.6.

MATERIALLY AFFECTED EITHER THE ACCEPTANCE OF THE RISK OR THE HAZARD ASSUMED

N.J.Super.A.D. 1989. Under statute which precludes insurer from avoiding liability on life policy unless false statements contained in application “materially affected either the acceptance of the risk or the hazard assumed,” insurer need only show that misrepresentation had a material impact on either acceptance of risk or hazard assumed; proof of a material effect on both of these aspects is not required. *N.J.S.A. 17B:24-3*, subd. d.—*Massachusetts Mut. Life Ins. Co. v. Manzo*, 560 A.2d 1215, 234 N.J.Super. 266, certification denied 583 A.2d 306, 121 N.J. 602, reversed 584 A.2d 190, 122 N.J. 104.—*Insurance* 2958.

MATERIALLY AFFECTED HAZARD ASSUMED

N.J.Super.A.D. 1989. Statute which precludes insurer from avoiding liability on life policy unless false statements contained in application “materially affected hazard assumed” by the insurer requires that there be a causal connection between insured’s false statements and the ultimate cause of death; insurer may void a policy by showing causal link between misrepresentation and actual loss or that matter misrepresented substantially contributed to the loss. *N.J.S.A. 17B:24-3*, subd. d.—*Massachusetts Mut. Life Ins. Co. v. Manzo*, 560 A.2d 1215, 234 N.J.Super. 266, certification denied 583 A.2d 306, 121 N.J. 602, reversed 584 A.2d 190, 122 N.J. 104.—*Insurance* 3001.

MATERIALLY AFFECT THE FINAL DECISION

Iowa 1943. An order overruling plaintiff’s motion to strike out certain paragraphs of defendant’s answer on ground that they were incompetent, irrelevant, and immaterial, redundant and conclusions of law and fact, and not ultimate statements of fact, did not involve the “merits” or “materially affect the final decision” nor “in effect determine the action” within the code, and hence was not appealable. Code 1939, § 12823, subsecs. 1, 4.—*Crowell v. Home Mut. Ins. Co. of Iowa*, 10 N.W.2d 69, 233 Iowa 531.—*App & E* 90, 93.

MATERIALLY AID

Or. 1988. Attorney for Idaho partnership, which sold unregistered limited partnership units in Oregon, did “materially aid” the sale of the unregistered units, where attorney had drafted the limited partnership agreement and major portions of the partnership’s offering circular, and had given an opinion on the partnership’s tax status, which was included in information provided to prospective investors, and thus attorney could be held liable unless he established lack of knowledge as an affir-

mative defense. ORS 59.115(3).—*Prince v. Brydon*, 764 P.2d 1370, 307 Or. 146.—*Sec Reg* 302.

MATERIALLY AIDED

N.D.Ill. 1995. Under 1974 version of Illinois Franchise Disclosure Act, corporate officers could not be liable for violations of Act unless they “materially aided” violation. Ill.Rev.Stat.1985, ch. 121½, ¶ 721(3).—*To-Am Equipment Co., Inc. v. Mitsubishi Caterpillar Forklift America*, 913 F.Supp. 1148.—*Trade Reg* 871(1).

MATERIALLY AIDS

N.Y. 1996. Under section of Franchise Sales Act imposing joint and several liability on certain persons for fraudulent activities in connection with registration, sale and promotion of franchises, joint and several liability is imposed only on executive officers, directors and controlling persons of franchisor whose actions materially aid the statutory violations; phrase “materially aids” refers not just to employees, but to all potentially jointly and severally liable defendants: controlling persons, partners, officers, directors, and employees of franchisor. McKinney’s General Business Law § 691, subd. 3.—*A.J. Temple Marble & Tile, Inc. v. Union Carbide Marble Care, Inc.*, 640 N.Y.S.2d 849, 87 N.Y.2d 574, 663 N.E.2d 890.—*Trade Reg* 871(1).

N.Y.Sup. 1994. Phrase “materially aids” in vicarious liability provision of New York Franchise Sales Act modifies term “person who directly or indirectly controls.” McKinney’s General Business Law § 691, subd. 3.—*A.J. Temple Marble & Tile, Inc. v. Union Carbide Marble Care, Inc.*, 618 N.Y.S.2d 155, 162 Misc.2d 941, affirmed 625 N.Y.S.2d 904, 214 A.D.2d 473, leave to appeal granted 628 N.Y.S.2d 478, 216 A.D.2d 972, affirmed as modified 640 N.Y.S.2d 849, 87 N.Y.2d 574, 663 N.E.2d 890.—*Trade Reg* 871(1).

MATERIALLY ALTER

N.D.Ohio 1998. Under Ohio law, alteration of contract by additional terms is “material” for purposes of statute making them part of contract between merchants unless they “materially alter” the contract, where alteration would result in surprise or hardship if incorporated without the express awareness of the nonassenting party. Ohio R.C. § 1302.10.—*Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 7 F.Supp.2d 954.—*Sales* 22(4), 23(4).

Ill.App. 3 Dist. 1991. Loan modification agreement between mortgagee and purchaser which lowered interest rate from original note and mortgage by 2.5% and lowered monthly payment, which changes were made without vendors/mortgagors’ knowledge or consent, did not “materially alter” terms of original note and mortgage, and thus, did not thereby relieve vendors/mortgagors from liability for deficiency judgment in foreclosure proceeding; no detriment to vendors/mortgagors resulted from loan modification agreement.—*Bank USA, S.A. v. Sill*, 164 Ill.Dec. 102, 582 N.E.2d 310, 221 Ill.App.3d 598.—*Mtg* 559(3).

N.Y.A.D. 1 Dept. 1976. Where buyer and seller were both merchants in textile industry, arbitration was common practice in textile industry, seller's order acknowledgment form made clear reference to terms on its reverse side, which included binding arbitration clause, such arbitration clause did not "materially alter" terms of contract and thus buyer's failure to notify seller within reasonable time after receipt of the form of objection to arbitration clause gave such arbitration clause binding effect. Uniform Commercial Code, § 2-207(2)(b, c).—Gaynor-Stafford Industries, Inc. v. Mafco Textured Fibers, 384 N.Y.S.2d 788, 52 A.D.2d 481.—Arbit 6.2.

N.C.App. 1990. "Loan modification agreement", which did not change terms of original loan but merely released certain property from creditor's lien in return for additional interest payment, was collateral to original note and did not "materially alter" note, within meaning of "material alteration" limitation on guarantors' liability. G.S. § 25-3-606.—Kirkhart v. Saieed, 389 S.E.2d 837, 98 N.C.App. 49.—Guar 53(1).

MATERIALLY ALTERED

S.D.Ind. 1983. Forum selection clauses contained in seller's acknowledgment form and invoice "materially altered" parties' contract, given that selection of distant forum with which buyer had no contacts merely by virtue of the seller's inclusion of clause in its forms could result in surprise and hardship to buyer. U.C.C. § 2-207; IC 26-1-2-104, 26-1-2-104(2), 26-1-2-207 (1982 Ed.)—Product Components, Inc. v. Regency Door and Hardware, Inc., 568 F.Supp. 651.—Sales 23(4).

Pa. 1930. Instrument is "materially altered" if change increases liability of, or injuriously affects, complaining parties or could do so.—Newman to Use of Wright v. Cover, 150 A. 595, 300 Pa. 267.—Alt of Inst 2.

MATERIALLY ALTERS

Cal.App. 2 Dist. 1972. A provision for arbitration inserted in acceptance or confirmation of an offer to purchase goods "materially alters" the offer within meaning of Commercial Code section providing that, between merchants, additional terms contained in a timely acceptance become part of contract unless they materially alter it. West's Ann.Com.Code, § 2207.—Windsor Mills, Inc. v. Collins & Aikman Corp., 101 Cal.Rptr. 347, 25 Cal.App.3d 987.—Sales 23(4).

N.Y.A.D. 1 Dept. 2000. Inclusion of an arbitration clause in a confirmation invoice "materially alters" an existing contract between merchants, within the meaning of the Uniform Commercial Code (UCC), so that absent explicit agreement by the recipient of the invoice, the arbitration clause does not become part of the contract. McKinney's Uniform Commercial Code § 2-207(2)(b).—J.J.'s Mae, Inc. v. H. Warshaw & Sons, Inc., 717 N.Y.S.2d 37, 277 A.D.2d 128.—Arbit 6.2; Sales 23(4).

MATERIALLY AND ADVERSELY AFFECTED

C.C.A.2 (N.Y.) 1941. In proceeding for real property arrangement, lienors were "materially and adversely affected" by extensive changes made in amount and status of their claims by proposed plan, under Bankruptcy Act definition of "affected," and hence amount of their claims should not be restricted, in computing whether plan for arrangement was accepted by creditors holding two-thirds in amount of debts of each class affected by the arrangement, to that part of their claims which was classified as unsecured because exceeding value of the security. Bankr.Act §§ 407, 453, 461(1, 11), 468, 11 U.S.C.A. §§ 807, 853, 861(1, 11), 868.—Kyser v. MacAdam, 117 F.2d 232.—Bankr 2251.

W.D.Ark. 1967. Where house of debtor in arrangement under chapter 13 had market value more than double the amount owing on mortgage note and there was deficit of only \$299.58 in monthly payments, resulting in slight injury to mortgagee from enjoining foreclosure, whereas foreclosure would destroy arrangement plan, injunction against foreclosure was proper, since mortgagee's interest was not "materially and adversely affected." Bankr.Act § 601 et seq., 11 U.S.C.A. § 1001 et seq.—In re Pizzoloto, 281 F.Supp. 109.—Bankr 2367.

MATERIALLY AND SUBSTANTIALLY

Colo. 1993. Defendant "materially and substantially" breached plea agreement by failing to meet obligation thereunder to "truthfully, faithfully, and fully provide accurate and verifiable information" concerning murder and, thus, agreement was not enforceable, notwithstanding that defendant met other obligations under agreement.—People v. McCormick, 859 P.2d 846, on remand 881 P.2d 423, rehearing denied, and certiorari denied.—Crim Law 273.1(2).

MATERIALLY AND SUBSTANTIALLY IMPAIRED

Tex.App.—Fort Worth 1991. Property has been "damaged for a public use" so as to constitutionally entitle owner to compensation when access is materially and substantially impaired, even though all reasonable access has not been impaired; if owner's right of access is not "materially and substantially impaired," or if restriction of access merely results in diversion of traffic or circuitry of travel, then there has been no "damage" within the meaning of the State or Federal Constitutions. Vernon's Ann.Texas Const. Art. 1, § 17; U.S.C.A. Const. Amend. 14.—City of Grapevine v. Grapevine Pool Road Joint Venture, 804 S.W.2d 675.—Em Dom 106.

MATERIALLY ASSISTED

Conn. 1997. Bank which financed investors' purchase of interests in real estate limited partnership "materially assisted" sale of interests, as well as promoters' fraud in connection therewith, and was liable on aiding and abetting theory under the Connecticut Uniform Securities Act (CUSA) to the extent that its involvement in venture was such that it knew or should have known of promoters' pri-

mary fraud; even in those instances where bank employee did not affirmatively represent to investors that real estate venture "couldn't miss," bank nevertheless influenced investors in their decisions to proceed with their investments by the ease with which it approved loans to investors, in apparent reliance on soundness of venture. C.G.S.A. § 36-498(a)(2) (1993).—Connecticut Nat. Bank v. Giacomini, 699 A.2d 101, 242 Conn. 17.—Sec Reg 302.

MATERIALLY BENEFITED

Cal.App.5 Dist. 1986. Person is "amenable" to Youth Authority training and treatment if he can be materially benefited; person will be "materially benefited" when there is reasonable possibility his likelihood to commit criminal behavior can be significantly reduced or eliminated within available confinement and jurisdiction time, or when there is reasonable possibility his criminal behavior would be exacerbated more by other disposition alternatives available to court when compared with alternatives available to Youth Authority. West's Ann. Cal.Welf. & Inst.Code §§ 707.2, 1731.5.—People v. Gonzales, 230 Cal.Rptr. 732, 186 Cal.App.3d 591, review denied.—Infants 69(4).

MATERIALLY BREACH

Ill.App.3 Dist. 1996. Farm land lessee did not "materially breach" term of lease that required him to tender annual financial report to lessor, and thus, lessor's successors in interest were not entitled to terminate lease; lessee testified that he provided lessor with final accounting for first year of lease (after which lessor died), and lessee thereafter in effect performed his contractual obligation by maintaining financial records and apportioning lessor's share of crops to lessor's successor, remainder of whose share was placed in storage.—Mann v. Mann, 219 Ill.Dec. 408, 671 N.E.2d 73, 283 Ill. App.3d 915.—Land & Ten 103(1).

MATERIALLY BREACHED

C.A.9 (Cal.) 1990. Vendor of shopping arcade "materially breached" contract to sell arcade by failing to provide purchaser with leases and certificates of estoppel from tenants, despite vendor's contention that it "substantially performed" its obligations; contract required vendor to provide purchaser with leases and estoppel certificates for 18 tenants, but vendor provided only five or six leases, and it was unclear as to whether vendor provided any estoppel certificates.—In re Aslan, 909 F.2d 367.—Ven & Pur 159.

MATERIALLY CHANGED

C.A.Fed. (Ind.) 1996. Compound 6, an enol cephem used to produce cefaclor, a broad-spectrum antibiotic, was likely "materially changed" in the process of its conversion to cefaclor, and thus importation and sale of cefaclor made from compound 6 did not likely infringe patent defining method of producing enol cephem compounds, including compound 6. 35 U.S.C.A. § 271(g)(1).—Eli Lilly and Co. v. American Cyanamid Co., 82

F.3d 1568, rehearing denied, in banc suggestion declined.—Pat 250.

D.Mass. 1999. Product made abroad by process protected by United States patent is "materially changed," within meaning of exception to statute prohibiting importation, sale, or use if there is real difference between product imported, offered for sale, sold, or used in United States and products produced by the patented process; court looks to substantiality of change between product of patented process and product that is being imported. 35 U.S.C.A. § 271(g)(1).—Genentech, Inc. v. Boehringer Mannheim GmbH, 47 F.Supp.2d 91.—Pat 258.

MATERIALLY CONTRIBUTED

Wash. 1954. The "materially contributed" or "substantial factor" test should not be substituted either as a definition of or a substitute for "proximate cause" in determining what is actionable negligence.—Blasick v. City of Yakima, 274 P.2d 122, 45 Wash.2d 309.—Neglig 372, 375, 380.

MATERIALLY CONTRIBUTES

Pa.Super. 1989. "Materially contributes" means having a necessary influence or effect, and when applying this definition to Vehicle Code section imposing mandatory sentence on drivers whose act of fleeing scene of accident materially contributes to serious bodily harm suffered by victim, a person is guilty of violating such section if his or her act of fleeing necessarily causes or influences (exacerbates) the serious bodily injury suffered by victim. 75 Pa.C.S.A. § 3742(b)(3).—Com. v. Edwards, 559 A.2d 63, 384 Pa.Super. 454, appeal denied 565 A.2d 1165, 523 Pa. 640.—Autos 359.

MATERIALLY DIFFERENT

U.S. 1991. Exchanged properties are "materially different" and are not realized disposition of property if respective possessors enjoy legal entitlements that are different in kind or extent. 26 U.S.C.A. § 1001(a).—Cottage Sav. Ass'n v. C.I.R., 111 S.Ct. 1503, 499 U.S. 554, 113 L.Ed.2d 589, dissenting opinion 111 S.Ct. 1519, 499 U.S. 554, 113 L.Ed.2d 589, on remand 934 F.2d 739.—Int Rev 3184.

C.A.8 (Iowa) 1993. There was no fatal variance between indictment which charged defendant with using and carrying firearms in relation to drug trafficking offense on one date and evidence at trial that defendant had carried firearms on other occasions during course of same drug offense; evidence of additional instances of gun use during the offense did not prove "materially different" facts from those alleged in indictment and, thus, did not amount to "variance."—U.S. v. Wessels, 12 F.3d 746, rehearing and suggestion for rehearing denied, certiorari denied 115 S.Ct. 105, 513 U.S. 831, 130 L.Ed.2d 53.—Ind & Inf 176.

Fla. 1995. In determining whether trial court's failure to inquire into state's discovery violation is harmless error, alternative trial preparation or strategy should be considered "materially different," for

purposes of determining whether defendant has been procedurally prejudiced, if it reasonably could have benefitted the defendant; in making this determination, every conceivable course of action must be considered.—*State v. Schopp*, 653 So.2d 1016, rehearing denied.—Crim Law 1166(10.10).

Fla.App. 2 Dist. 2002. In context of *Richardson* hearing to determine whether, as result of state's discovery violation, defense has been procedurally prejudiced, in that there is reasonable possibility that defendant's trial preparation or strategy would have been materially different had violation not occurred, trial preparation or strategy should be considered "materially different" if it reasonably could have benefitted defendant.—*Greehan v. State*, 830 So.2d 878, rehearing denied.—Crim Law 627.8(5).

MATERIALLY DIFFERENT FINDING OF FACT

Pa.Cmwlt. 1986. Common pleas court's finding that barmaid who delivered cocaine to undercover officer had romantic feelings for the officer was not a "materially different finding of fact" from that of the Liquor Control Board and did not permit common pleas court to modify the LCB penalty imposed upon the liquor licensee.—*Com., Pennsylvania Liquor Control Bd. v. Adair*, 515 A.2d 1016, 101 Pa.Cmwlt. 163, appeal granted *Petition of Adair*, 527 A.2d 545, 515 Pa. 585, appeal granted 527 A.2d 545, 515 Pa. 585, appeal granted *Petition of Terregino*, 527 A.2d 549, 515 Pa. 590, reversed 546 A.2d 19, 519 Pa. 103.—Int Liq 108.10(11).

MATERIALLY EXCEEDS

Me. 1989. The "materially exceeds" precondition for discretionary award of expert and attorney fees in dissenting shareholders' appraisal proceeding was met where the court found the fair value of the dissenters' shares to be over 260% of the amount corporation offered to pay therefor. 13—A M.R.S.A. § 909, subd. 9, par. H.—In re *Valuation of Common Stock of McLoon Oil Co.*, 565 A.2d 997.—Corp 584.

MATERIALLY EXCULPATORY

Wash.App. Div. 2 2001. Evidence is "materially exculpatory" only if it meets a two-fold test: (1) its exculpatory value must have been apparent before the evidence was destroyed, and (2) the nature of the evidence leaves the defendant unable to obtain comparable evidence by other reasonably available means.—*State v. Burden*, 17 P.3d 1211, 104 Wash. App. 507.—Crim Law 700(9).

MATERIALLY EXCULPATORY EVIDENCE

Ind.App. 2002. "Materially exculpatory evidence," the failure to preserve of which raises due process concerns, is that evidence which possesses an exculpatory value that was apparent before the evidence was destroyed and must be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. U.S.C.A. Const.Amend. 14.—*Laughner v. State*, 769 N.E.2d 1147, rehearing denied,

transfer denied 783 N.E.2d 701, certiorari denied 123 S.Ct. 1929.—Const Law 268(5).

Ind.App. 1999. "Materially exculpatory evidence," for purposes of determining whether a defendant's due process rights have been violated by the state's failure to preserve evidence, is that evidence which possesses an exculpatory value that was apparent before the evidence was destroyed and must be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.—*Chissell v. State*, 705 N.E.2d 501, transfer denied 714 N.E.2d 170.—Const Law 268(5); Crim Law 700(9).

Wash.App. Div. 3 1995. For evidence to be "materially exculpatory evidence," such that failure to preserve it would violate defendant's due process right, defendant must show that evidence would have exonerated him, and evidence must possess exculpatory value that was apparent before it was destroyed and be of such nature that defendant would be unable to obtain comparable evidence by other reasonably available means. U.S.C.A. Const. Amend. 14.—*State v. Lewellyn*, 895 P.2d 418, 78 Wash.App. 788, amended on reconsideration, review granted *State v. Smith*, 910 P.2d 482, 128 Wash.2d 1011, reversed 922 P.2d 811, 130 Wash.2d 215.—Const Law 268(5).

MATERIALLY FALSE

C.A.9 1996. Statement can be "materially false" if it includes information which is "substantially inaccurate" and is of type that would affect creditor's decision-making process; to except debt from discharge, creditor must show not only that statements are inaccurate, but also that they contain important and substantial untruths. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re *Candland*, 90 F.3d 1466, as amended.—Bankr 3353(12.15).

C.A.10 (Kan.) 1981. Financial report submitted by debtor for a credit rating in the "Blue Book" was "materially false" so as to preclude discharge in bankruptcy upon a showing by creditor of other statutory prerequisites where financial statement showed a net profit for year in question of \$46,598.85, with a net worth of over \$95,000, whereas individual income tax return for that year showed a net loss of \$9,442.70. Bankr.Act, § 14(c)(1, 3), 11 U.S.C.A. § 32(c)(1, 3).—*Matter of Stafos*, 666 F.2d 1343, certiorari denied *Stafos v. Bell*, 102 S.Ct. 2299, 456 U.S. 1007, 73 L.Ed.2d 1302.—Bankr 3353(1.30).

C.A.2 (N.Y.) 2000. Borrower's statement that overstates amount available from the proceeds of a building loan for improvement of the property is "materially false," for purposes of New York Lien Law requiring parties to a building loan contract to file a certified statement setting forth specified information. N.Y.McKinney's Lien Law § 22.—In re *Elm Ridge Associates*, 234 F.3d 114.—Mtg 151(3).

C.A.2 (N.Y.) 1996. Statement is "materially false" within meaning of discharge exception for false financial statements if it paints substantially untruthful picture of financial condition by misrep-

resenting information of type that would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B)(i).—In re Furio, 77 F.3d 622.—Bankr 3353(12.15).

C.A.2 (N.Y.) 1968. Where bankrupt's financial statement, although erroneous, was not published with any intent to deceive or defraud his creditors, the bankrupt had not published a "materially false" financial statement within provision of Bankruptcy Act barring from discharge those bankrupts who have obtained money or property on credit by making a materially false statement in writing respecting his financial condition. Bankr.Act, § 14, sub. c(3), 11 U.S.C.A. § 32(c) (3).—In re Ostrer, 393 F.2d 646, on remand 318 F.Supp. 984.—Bankr 3273.1.

C.A.3 (Pa.) 1955. Failure to include in partnership financial statement, upon which partnership had obtained credit, partners' individual obligations did not render statement "materially false" within Bankruptcy Act provision that obtaining money or property on credit by making materially false statement respecting financial condition a ground for denial of discharge. Bankr.Act, §§ 5, sub. g, 14, sub. c(3), 11 U.S.C.A. §§ 23, sub. g, 32, sub c(3).—In re Ginsberg, 219 F.2d 472.—Bankr 3283.

C.A.5 (Tex.) 1995. Financial statement submitted by Chapter 7 debtor in connection with renewal of loan, which falsely indicated that debtor and wife had cash flow surplus of over \$45,000 with which to service existing debts when, in fact, debtor and spouse were barely able to make ends meet, was "materially false" within meaning of statutory exception to discharge. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—Matter of Norris, 70 F.3d 27.—Bankr 3353(12.15).

S.D.Miss. 1997. Financial statements submitted to bank by Chapter 7 debtor in connection with loan and renewals of loan were "materially false," within meaning of dischargeability exception, though debtor may have come within bank's net worth and income parameters, and may have received loan, even without the misrepresentations and omissions on his financial statements; debtor's inclusion as asset of 60 acres which he did not in fact own, and his failure to disclose \$39,000 encumbrance on residence or fact that residence was subject of conditional sales contract, could be regarded as material misstatements/omissions, even if they were not determinative on bank's decision to extend financing to debtor. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—Byrd v. Bank of Mississippi, 207 B.R. 131.—Bankr 3353(12.15).

E.D.N.Y. 1956. Under statute providing that discharge shall not be granted to a bankrupt who has obtained money or property on credit or an extension or renewal of credit by making a materially false financial statement, a financial statement is "materially false" if made and acquiesced in either with actual knowledge that it was incorrect, or with reckless indifference to actual facts, without examining available source of knowledge which lay at hand, and with no reasonable ground to believe that it was in fact correct. Bankr.Act, § 14, sub. c,

11 U.S.C.A. § 32, sub. c.—In re Hirsch, 140 F.Supp. 361.—Bankr 3282.1.

M.D.Tenn. 1989. Financial statement which misrepresented debtor's net worth by millions of dollars was "materially false," within meaning of statutory exception to discharge. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Sanders, 110 B.R. 328.—Bankr 3353(12.15).

9th Cir.BAP (Cal.) 1994. Statement can be "materially false" for nondischargeability purposes if it includes information that is substantially inaccurate and is of type that would affect creditor's decision-making process. (Per Russell, J., with one Judge concurring in result.) Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Berr, 172 B.R. 299.—Bankr 3353(12.15).

Bkrcty.N.D.Ala. 1996. Financial statement is "materially false," within meaning of statutory exception to discharge, if it contains substantially untruthful information of type which would normally bear on bank's credit-making decision. Bankr. Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Robinson, 192 B.R. 569.—Bankr 3353(12.15).

Bkrcty.E.D.Ark. 2000. Financial statement is "materially false," within meaning of dischargeability exception, if it paints substantially untruthful picture of debtor's financial condition by misrepresentation of type which would normally affect decision to extend credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Webb, 256 B.R. 292.—Bankr 3353(12.15).

Bkrcty.E.D.Ark. 2000. Financial statement that Chapter 7 debtor had submitted in connection with loan was "materially false," within meaning of dischargeability exception, where misrepresentations therein together indicated that debtor had positive net worth of \$155,000.00 when, in fact, his liabilities exceeded his assets by \$215,000.00. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Webb, 256 B.R. 292.—Bankr 3353(12.15).

Bkrcty.C.D.Cal. 2000. Statement can be "materially false," for purposes of the discharge exception for debts obtained through use of false financial statements, if it includes information which is "substantially inaccurate" and is of the type that would affect creditor's decision-making process. Bankr. Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Osborne, 257 B.R. 14.—Bankr 3353(12.15).

Bkrcty.E.D.Cal. 1997. Statement is "materially false" under false financial statement discharge exception if it paints substantially untruthful financial picture and omits information that would have affected creditor's decision making process. Bankr. Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Tallant, 207 B.R. 923, affirmed in part, reversed in part 218 B.R. 58.—Bankr 3353(12.15).

Bkrcty.D.Colo. 1986. Financial statement is "materially false," for purpose of statutory exception to discharge, only where it is substantially inaccurate. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Anzman, 73 B.R. 156.—Bankr 3353(12.15).

Bkrcty.D.Colo. 1986. Financial statement which failed to disclose that debtors had concluded loan with one bank two days before completing loan application with second bank, and application for second loan that did not list first loan or fact that equipment and inventory of debtor were used as security for first loan were “materially false” for purposes of nondischargeability on basis of use of false written financial statement, where without value in inventory and equipment, second bank would not have been in position to make \$20,000 loan to debtor. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Wolf*, 67 B.R. 844.—Bankr 3353(12.20).

Bkrcty.D.Conn. 2001. Financial statement is “materially false,” within meaning of dischargeability exception, if it paints a substantially untruthful picture of debtor’s financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Capelli*, 261 B.R. 81.—Bankr 3353(12.15).

Bkrcty.D.Conn. 2001. Writings containing pertinent omissions may qualify as “materially false,” for purposes of dischargeability exception. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Capelli*, 261 B.R. 81.—Bankr 3353(12.15).

Bkrcty.D.Conn. 1986. Financial statement which Chapter 7 debtor submitted in connection with loan was not “materially false,” so as to render resulting debt nondischargeable in bankruptcy, where debtor’s net worth was more than sufficient to support application for loan even after making deductions for undisclosed liens. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Roland*, 65 B.R. 1003.—Bankr 3353(12.15).

Bkrcty.M.D.Fla. 2002. Under the discharge exception for debts obtained by use of a false financial statement, creditor must show a significant understatement of liabilities or exaggeration of assets in order for a statement to be “materially false.” Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Bratcher*, 281 B.R. 753.—Bankr 3353(12.15).

Bkrcty.M.D.Fla. 2002. Financial statements issued by Chapter 7 debtor were “materially false” writings concerning the debtor’s financial condition, within meaning of the discharge exception for debts obtained by use of a false financial statement; debtor testified that he had no interest in at least \$154,500.00 worth of assets that he listed in the financial statements, debtor failed to represent that his pearl collection valued at \$125,000.00 had been pawned and also failed to disclose that his interest in \$60,000.00 in certificates of deposit was fully encumbered by liens, and so the financial statements falsely represented debtor’s net worth by at least \$339,500.00 out of listed net worths of \$448,891.57 and \$394,144.00. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Bratcher*, 281 B.R. 753.—Bankr 3353(12.15).

Bkrcty.M.D.Fla. 1998. Financial statement used by Chapter 7 debtor to convince judgment creditors to invest in failed motel venture was “materially false,” within meaning of dischargeability exception,

where debtor valued other motel property which he had purchased earlier that month at \$1,800,000, despite fact that he had paid only \$700,000 for property just a few days earlier, where debtor likewise overvalued other assets, and where debtor claimed to own an 82% interest in certain property despite fact that, at time, his interest was only 33%. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Mowji*, 224 B.R. 221.—Bankr 3353(12.15).

Bkrcty.M.D.Fla. 1991. Debtor’s financial statements were “materially false,” for purpose of determining whether loan debts were nondischargeable, where debtor not only significantly understated his liabilities, but also exaggerated his assets. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Burnett*, 129 B.R. 299.—Bankr 3353(12.15).

Bkrcty.M.D.Fla. 1989. Financial statements submitted by debtor in connection with loan were “materially false,” within meaning of exception to discharge, where statements failed to disclose more than \$75,000 in liabilities while overvaluing debtor’s cash on hand by more than seven fold. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Wing*, 96 B.R. 369.—Bankr 3353(12.20).

Bkrcty.S.D.Fla. 1989. Financial statement submitted by debtor in connection with loan was not “materially false,” within meaning of exception to discharge, where unowned property falsely claimed as assets by debtor did not substantially affect net worth, which in any event is well in excess of amount of loan. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re DiMarco*, 105 B.R. 128.—Bankr 3353(12.15).

Bkrcty.M.D.Ga. 2001. Party demonstrates that financial statement is “materially false,” for dischargeability purposes, by presenting evidence that statement was false at time it was created, that falsity was material in amount, and that falsity was material in effect it had on creditor receiving the statement such that it affected creditor’s decision-making process. Bankr.Code, 11 U.S.C.A. § 523(a)(B).—*In re Gordon*, 277 B.R. 805.—Bankr 3353(12.15).

Bkrcty.M.D.Ga. 2001. Financial statements that debtor’s husband submitted on debtor’s behalf in connection with loan applications were “materially false,” for dischargeability purposes, where both statements listed debtor’s income at \$271,000 and her assets at \$440,000, when, in actuality, debtor’s income was \$0 and her assets were less than \$150,000; lender’s representative testified that, had debtor provided accurate financial information, she would not have been approved for loans. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—*In re Gordon*, 277 B.R. 805.—Bankr 3353(12.15).

Bkrcty.M.D.Ga. 2001. Financial statement that debtor submitted in order to obtain agricultural loan was “materially false,” within meaning of dischargeability exception, where debtor’s actual income, of just over \$100,000, was less than half what was represented on financial statement, where statement also overvalued debtor’s assets by roughly \$500,000, and where creditor testified that debtor would not have qualified for loan had statement

accurately reflected her true financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Gordon, 277 B.R. 796, reconsideration denied 2001 WL 1875453.—Bankr 3353(12.15).

Bkrty.M.D.Ga. 2001. Financial statement is “materially false,” for debt dischargeability purposes, if it paints a substantially untruthful picture of debtor’s financial condition by misrepresenting information of type that would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Gordon, 277 B.R. 796, reconsideration denied 2001 WL 1875453.—Bankr 3353(12.15).

Bkrty.M.D.Ga. 1996. For financial statement to be “materially false,” within meaning of statutory exception to discharge, statement must contain falsehood which is significant in both amount and effect on creditor receiving financial statement. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Jones, 197 B.R. 949.—Bankr 3353(12.15).

Bkrty.N.D.Ill. 1999. Financial statement which Chapter 7 debtor used to convince litigant to release fraud claim that it had against debtor was “materially false,” within meaning of dischargeability exception, where statement significantly understated debtor’s income by failing to disclose his use of corporate automobiles or of free housing provided by corporation, as well as certain “advances” that he received from corporation; when corrected to eliminate such errors, debtor’s annual income was from two to three times more than what he represented to litigant in convincing it to compromise its claim. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Morris, 230 B.R. 352, affirmed Shaw Steel, Inc. v. Morris, 240 B.R. 553, affirmed 223 F.3d 548.—Bankr 3353(12.15).

Bkrty.N.D.Ill. 1999. Financial statement is “materially false,” within meaning of dischargeability exception, when it is importantly or substantially untrue. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Morris, 230 B.R. 352, affirmed Shaw Steel, Inc. v. Morris, 240 B.R. 553, affirmed 223 F.3d 548.—Bankr 3353(12.15).

Bkrty.N.D.Ill. 1999. Financial writings with pertinent omissions may qualify as “materially false” under dischargeability exception. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Morris, 230 B.R. 352, affirmed Shaw Steel, Inc. v. Morris, 240 B.R. 553, affirmed 223 F.3d 548.—Bankr 3353(12.20).

Bkrty.N.D.Ill. 1997. Under both “but for” and “substantial untruth” tests for determining whether financial statement is materially false, rental application that failed to disclose that debtor-tenant’s reported gross weekly earnings included subsidy from her father was “materially false”; landlord testified that he would not have leased apartment to debtor had he known that debtor’s gross income included subsidy because prospective tenant’s earned income from employment was one of two critical factors used to make rental determination. Bankr.Code 11 U.S.C.A. § 523(a)(2)(B).—In re Napier, 205 B.R. 900.—Bankr 3353(12.15).

Bkrty.N.D.Ill. 1997. Under “substantial untruth test” for determining whether financial statement is materially false, statement is “materially false” if it paints substantially untruthful picture of financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Napier, 205 B.R. 900.—Bankr 3353(12.15).

Bkrty.N.D.Ill. 1992. Financial statement is “materially false,” for dischargeability purposes, if it paints substantially untruthful picture of financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Bailey, 145 B.R. 919.—Bankr 3353(12.15).

Bkrty.N.D.Ind. 1987. The omission, concealment, or understatement of any of the debtor’s material liabilities constitutes “materially false” statement, for purposes of determining whether debt should be declared nondischargeable for use of “materially false” financial statement. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Howard, 73 B.R. 694.—Bankr 3353(12.20).

Bkrty.N.D.Iowa 2002. Objectively, a statement is “materially false” within the meaning of the discharge exception for false statements respecting a debtor’s financial condition if it paints a substantially untruthful picture of a financial condition by a misrepresentation of the type which would normally affect the decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re McCleary, 284 B.R. 876.—Bankr 3353(12.15).

Bkrty.N.D.Iowa 1983. For purposes of section of Bankruptcy Code excepting from discharge debts for obtaining money by the use of materially false financial statements, “materially false” should be construed to mean an important or substantial untruth. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Anderson, 29 B.R. 184.—Bankr 3353(12.15).

Bkrty.D.Mass. 1992. Chapter 7 debtor’s financial statements were “materially false” in describing debtor’s enormous liabilities and manner in which his properties were held, for nondischargeability purposes; first financial statement represented that debtor was sole title holder of several properties which he owned with his wife and omitted outstanding liabilities of corporation for which he was liable.—In re Herzog, 140 B.R. 936.—Bankr 3353(12.15), 3353(12.20).

Bkrty.D.Mass. 1985. Incorrect or erroneous financial statement is not necessarily “materially false,” as bearing upon whether debt is within exceptions to discharge in bankruptcy under Bankruptcy Code, 11 U.S.C.A. § 523(a)(2)(B), a “materially false” statement being one painting substantially untruthful picture of financial condition by misrepresenting information of type which would normally affect the decision to grant credit.—In re Delano, 50 B.R. 613.—Bankr 3353(12.15).

Bkrty.D.Mass. 1983. Bank seeking to except from discharge debt for loan granted in reliance on false financial statements was required to demon-

strate financial statement was "materially false," which meant substantially untrue. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Andrews, 33 B.R. 970.—Bankr 3353(12.15).

Bkrtcy.W.D.Mich. 1992. Financial statement presented to landlord by Chapter 7 debtor-guarantor was "materially false," for purpose of determining whether debt to landlord was nondischargeable, where statement showed approximately \$75,000 more cash on hand than actually existed, omitted real estate taxes due, and included real estate income which never existed. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re O'Connor, 145 B.R. 883.—Bankr 3353(12.20).

Bkrtcy.D.Minn. 1985. A "materially false" financial statement rendering resulting debt nondischargeable is one which paints a substantially untruthful picture of financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Eberle, 61 B.R. 638.—Bankr 3353(12.15).

Bkrtcy.D.Minn. 1985. A "materially false" statement, within meaning of Bankruptcy Code section [11 U.S.C.A. § 523(a)(2)(B)] which excepts from discharge any debt obtained by use of a materially false written financial statement, is one which paints a substantially untruthful picture of a financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Harms, 53 B.R. 134.—Bankr 3353(12.15).

Bkrtcy.W.D.Mo. 2001. Financial statement is "materially false," for debt dischargeability purposes, if it paints substantially untruthful picture of debtor's or insider's financial condition, by some misrepresentation of a type that would normally affect decision to extend credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Bohr, 271 B.R. 162.—Bankr 3353(12.15).

Bkrtcy.W.D.Mo. 2001. Financial statement is "materially false," for debt dischargeability purposes, if it falsely represents overall financial condition of debtor or has major omissions. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Bohr, 271 B.R. 162.—Bankr 3353(12.15).

Bkrtcy.W.D.Mo. 2001. Financial statement which Chapter 7 debtors submitted to obtain financing for their business was "materially false," for debt dischargeability purposes, inasmuch as debtors held themselves out as sole owners of real property in which they held only remainder interest; real property, which debtors valued at \$262,000, constituted bulk of net worth indicated on this financial statement, as value of debtors' other assets was estimated at only \$8,042. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Bohr, 271 B.R. 162.—Bankr 3353(12.15).

Bkrtcy.W.D.Mo. 1993. Statement used by debtor to obtain loan is "materially false," within meaning of statutory exception to discharge, if it is substantially inaccurate. Bankr.Code, 11 U.S.C.A.

§ 523(a)(2)(B).—In re Boles, 150 B.R. 733.—Bankr 3353(12.15).

Bkrtcy.E.D.N.Y. 1997. "Materially false" statement as to debtor's financial condition, such as may preclude discharge of resulting debt, is one that contains important or substantial untruth; measuring stick of material falsity is whether financial institution would have made loan if debtor's true financial condition had been known. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Bruce, 214 B.R. 938.—Bankr 3353(12.15).

Bkrtcy.E.D.N.Y. 1997. Obligation of roughly \$400 per month which Chapter 7 debtors omitted from application submitted in support of debt consolidation loan did not render their application "materially false," within meaning of debt dischargeability exception, where debtors would have qualified for loan under lending institution's guidelines even if this indebtedness had been disclosed. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Bruce, 214 B.R. 938.—Bankr 3353(12.15).

Bkrtcy.N.D.N.Y. 1981. Requirement that financial statement be "materially false" so as to render debt nondischargeable should be taken to mean substantial or important untruth. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B)(i).—In re Magnusson, 14 B.R. 662.—Bankr 3353(12.15).

Bkrtcy.S.D.N.Y. 1992. For financial statement to qualify as being "materially false" for purpose of dischargeability exception, statement must be one which paints substantially untruthful picture of debtor's financial condition by misrepresenting information of type that would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Boice, 149 B.R. 40.—Bankr 3353(12.15).

Bkrtcy.D.N.D. 1997. Familial debts which Chapter 12 debtors omitted from financial statement that they submitted in connection with their application for renewal of loan did not render financial statement "materially false," within meaning of statutory exception to discharge, given evidence that bank, in deciding to renew loan, had not relied on debtors' failure to list this \$7,700 in familial debts, but on debtors' ability to negotiate refinancing of loan with another entity; evidence was presented that bank would have renewed loan even if omitted debts had been listed, because it was relying on this pending refinancing and buy-out of its loan. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Wehri, 212 B.R. 963.—Bankr 3353(12.15).

Bkrtcy.D.N.D. 1997. Financial statement is "materially false," within meaning of statutory exception to discharge, if it contains statement that paints a substantially untruthful picture of debtor's financial condition by misrepresentation of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Wehri, 212 B.R. 963.—Bankr 3353(12.15).

Bkrtcy.D.N.D. 1994. Financial statement used by debtor to obtain extension or renewal of creditor is "materially false" for purposes of false financial

statement discharge exception if it not only contains erroneous information, but rather contains information that is substantially inaccurate. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Dammen, 167 B.R. 545.—Bankr 3353(12.20).

Bankrty.D.N.D. 1993. Statement used by debtor in order to obtain credit is “materially false,” within meaning of statutory exception to discharge of debts to extent obtained by use of materially false statement of financial condition, not only if it contains erroneous information, but even if it contains information that is substantially inaccurate. Bankr. Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Kerbaugh, 162 B.R. 255.—Bankr 3353(12.15).

Bankrty.D.N.D. 1993. For purposes of exception to discharge for false financial statements, statement used by debtor to obtain loan is “materially false” if it not only contains erroneous information but, rather, contains information that is substantially inaccurate. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Kerbaugh, 159 B.R. 862, amended and superseded 1993 WL 1623205.—Bankr 3353(12.15).

Bankrty.D.N.D. 1993. Objectively, statement is “materially false” for purposes of exception to discharge for false financial statements if it is one that paints substantially untruthful picture of financial condition by misrepresenting information of type which normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Kerbaugh, 159 B.R. 862, amended and superseded 1993 WL 1623205.—Bankr 3353(12.15).

Bankrty.D.N.D. 1992. Financial statements submitted by debtors to bank omitting any reference to outstanding obligation owed to secured creditor on deficiency after sale of one debtor’s tractor and trailer were “materially false” for nondischargeability purposes. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Frey, 150 B.R. 742.—Bankr 3353(12.15).

Bankrty.N.D.Ohio 2001. For a financial statement to be “materially false,” for purposes of the discharge exception for false pretenses, false representation, or actual fraud, it must be one which paints a substantially untruthful picture of debtor’s financial condition by misrepresenting information of a type which would normally affect the decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Kromar, 258 B.R. 692.—Bankr 3353(12.15).

Bankrty.N.D.Ohio 1999. For financial statement to be “materially false,” for debt dischargeability purposes, it must be one which paints a substantially untruthful picture of debtor’s financial condition, by misrepresenting information of type which would normally affect decision to grant credit. Bankr. Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Collier, 231 B.R. 618.—Bankr 3353(12.15).

Bankrty.N.D.Ohio 1999. For financial statement to be “materially false,” for debt dischargeability purposes, the information which it contains must not only be substantially inaccurate, but must also be information which affected creditor’s decision-

making process. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Collier, 231 B.R. 618.—Bankr 3353(12.15).

Bankrty.N.D.Ohio 1999. Omission, concealment or understatement of liabilities can constitute a “materially false” statement, within meaning of statutory exception to discharge for debts for money obtained by materially false statement in writing regarding debtor’s or insider’s financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Collier, 231 B.R. 618.—Bankr 3353(12.15).

Bankrty.N.D.Ohio 1999. Chapter 7 debtor’s failure to list, on financial statement which he submitted to bank in connection with loan application, a personal liability of approximately \$165,000 which, if it had been disclosed, would have reduced debtor’s stated net worth of \$320,500 by more than 50% rendered his financial statement “materially false,” for debt dischargeability purposes. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Collier, 231 B.R. 618.—Bankr 3353(12.15).

Bankrty.N.D.Ohio 1991. Financial statement is “materially false,” within meaning of statutory exception to discharge, if it contains important or substantial untruth. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Frugh, 133 B.R. 870.—Bankr 3353(12.15).

Bankrty.N.D.Ohio 1990. Debtor’s overstatement of income or understatement of liabilities can render financial statement “materially false,” within meaning of statutory exception to discharge. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Hodges, 116 B.R. 558.—Bankr 3353(12.20).

Bankrty.S.D.Ohio 1989. Financial statement submitted in connection with loan application was not “materially false,” though most of debtors’ net income was allocated to meet financial obligations. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re West, 108 B.R. 157.—Bankr 3353(12.15).

Bankrty.N.D.Okla. 1993. In order for statement to be “materially false,” for nondischargeability purposes, it must be substantially inaccurate. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Smith, 158 B.R. 847.—Bankr 3353(12.15).

Bankrty.N.D.Okla. 1993. Evidence established that Chapter 7 debtor’s bond application was “materially false” in listing as asset \$295,417 based purely on hypothetical situation using proper accounting procedure, and in overstating value of debtor’s oil and gas properties, for purposes of determining whether debt to issuer of appeal bond was nondischargeable based on debtor’s submission of false financial statement; application overstated debtor’s net worth by \$1 million. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Smith, 158 B.R. 847.—Bankr 3353(12.20).

Bankrty.N.D.Okla. 1992. To render debt nondischargeable based upon materially false statement of debtor’s financial condition, creditor must show not only that financial statement was in fact false, but that it was materially false; “materially false” means statement must contain not only incorrect or erroneous information but must be substantially

inaccurate. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Reeds, 145 B.R. 703.—Bankr 3353(12.15).

Bkrty.E.D.Pa. 1995. Financial statement submitted by Chapter 7 debtors in connection with credit application was “materially false,” within meaning of statutory exception to discharge, where financial statement overstated by \$19,000 the \$32,000 in annual income to which they admitted in bankruptcy court. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Rodriguez, 184 B.R. 467.—Bankr 3353(12.15).

Bkrty.E.D.Pa. 1994. “Materially false” financial statement, of kind sufficient to trigger statutory exception to discharge, is one that contains substantial or important untruth. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Chryst, 177 B.R. 486.—Bankr 3353(12.15).

Bkrty.E.D.Pa. 1981. Term “materially false” as used in statutory exception from discharge for a debt obtained by use of materially false written statement means no more than actually false or materially false and a creditor must show only that the statement is actually false, but that it was made with requisite intent to deceive. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Heil, 14 B.R. 581.—Bankr 3353(12.15).

Bkrty.E.D.Pa. 1981. Phrase “materially false” as used in provision of Bankruptcy Code governing nondischargeability of a debt obtained by use of a materially false financial statement means no more than actually false or simply false or untrue; to construe the phrase to include a degree of intent is redundant in light of the “intent to deceive” element. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B), (a)(2)(B)(i, iv).—In re Drewett, 13 B.R. 877.—Bankr 3353(12.15).

Bkrty.E.D.Pa. 1979. The “materially false” requirement for nondischargeability of debt under section 17a(2) of the Bankruptcy Act should be taken to mean a substantial or important untruth, and any requirement that “materially false” mean intentionally false or so carelessly made as to be blameworthy would be redundant, since by operation of remaining language of the section the bankrupt is culpable for the substantial untruth only if it was made with the intent to deceive the creditor. Bankr.Act, § 17(a)(2), 11 U.S.C.A. § 35(a)(2); Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Tomeo, 1 B.R. 673.—Bankr 3353(12.15).

Bkrty.W.D.Pa. 1989. Financial statement is “materially false,” for nondischargeability purposes, if it contains important or substantial untruth. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Galizia, 108 B.R. 63.—Bankr 3353(12.15).

Bkrty.W.D.Tenn. 2001. Financial statement is “materially false,” within meaning of discharge exception, if information contained therein provides a substantially untruthful picture of financial condition of debtor, that affects creditor’s decision to extend credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Michael, 265 B.R. 593.—Bankr 3353(12.15).

Bkrty.W.D.Tenn. 2001. Financial statement submitted by Chapter 7 debtors in connection with loan refinancing was “materially false,” within meaning of discharge exception, where statement grossly overstated debtors’ annual income, failed to list any of debtors’ expenses, and omitted all of debtors’ personal property. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Michael, 265 B.R. 593.—Bankr 3353(12.15).

Bkrty.N.D.Tex. 2001. For financial statement to be “materially false,” for dischargeability purposes, it must not only be erroneous, but must contain information which causes it to be substantially inaccurate. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Slonaker, 269 B.R. 595.—Bankr 3353(12.15).

Bkrty.N.D.Tex. 2001. Creditor’s actual subjective reliance on debtor’s false financial statement is not, by itself, dispositive of whether these falsehoods are “material,” for dischargeability purposes; financial statement may be “materially false” though creditor did not rely on it. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Slonaker, 269 B.R. 595.—Bankr 3353(12.15), 3353(14).

Bkrty.N.D.Tex. 2001. Financial statement may be “materially false,” for dischargeability purposes, where it contains multiple misrepresentations regarding debtor’s assets and/or their value. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Slonaker, 269 B.R. 595.—Bankr 3353(12.15).

Bkrty.N.D.Tex. 2001. Financial statement is “materially false,” for dischargeability purposes, where it paints a substantially untruthful picture of debtor’s financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Slonaker, 269 B.R. 595.—Bankr 3353(12.15).

Bkrty.N.D.Tex. 2001. Financial statements with pertinent omissions may be “materially false,” for dischargeability purposes. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Slonaker, 269 B.R. 595.—Bankr 3353(12.20).

Bkrty.D.Utah 1984. Assertion in financial statement given to bank prior to date loan was made that debtor’s net worth was \$754,750 and assertion in updated financial statement that net worth was \$353,000 were “materially false” within meaning of provision of Bankruptcy Code governing nondischargeability of debt obtained through materially false written financial statement respecting debtor’s financial condition, where debtor’s net worth was at best only \$74,000, and had lender known truth, loan of \$35,000 would not have been made. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Harmer, 61 B.R. 1.—Bankr 3353(12.15).

Bkrty.E.D.Va. 1994. “Materially false” financial statement, within meaning of statutory exception to discharge, is one which paints a substantially untruthful picture of debtor’s financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Ross,

180 B.R. 121, opinion supplemented 180 B.R. 130, affirmed *Ross v. Riggs Nat. Bank of Washington*, D.C., 199 B.R. 576, affirmed 199 B.R. 576.—Bankr 3353(12.15).

MATERIALLY FALSE FINANCIAL STATEMENT

E.D.N.Y. 1933. To prevent bankrupt's discharge on ground bankrupt obtained credit by giving "materially false financial statement," evidence must reasonably show material error or omission and that statement was intentionally and knowingly false (Bankr.Act § 14b(3), as amended 11 U.S.C.A. § 32(b)(3)).—In re *Strauss*, 4 F.Supp. 810.—Bankr 3317(2.1).

E.D.N.Y. 1933. Evidence of bankrupt's omission of personal liabilities and overstatement of assets in financial statement, on strength of which bank renewed bankrupt's note, held to require denial of bankrupt's discharge, where unrebutted, as showing renewal of credit obtained by "materially false financial statement" (Bankr.Act § 14b(3, 7), as amended 11 U.S.C.A. § 32(b)(3, 7)).—In re *Strauss*, 4 F.Supp. 810.—Bankr 3317(2.1).

E.D.N.Y. 1933. Actual knowledge of falsity and conscious intent to deceive are not essential to deny bankrupt's discharge on ground of "materially false financial statement" where bankrupt makes no effort to verify facts and does not inquire into omitted liabilities (Bankr.Act § 14b(3), as amended 11 U.S.C.A. § 32(b)(3)).—In re *Strauss*, 4 F.Supp. 810.—Bankr 3273.1.

Bkrty.D.Mass. 1984. For purposes of false financial statement exception to dischargeability, a "materially false financial statement" is one containing an important and substantial untruth. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re *Mann*, 40 B.R. 496.—Bankr 3353(12.15).

Bkrty.D.Mass. 1983. A "materially false financial statement" is one which paints a substantially untruthful picture of a financial condition by misrepresenting information of the type which would normally affect a decision to grant credit; question of materiality should be judged not on basis of size or seriousness of the error but by comparison of debtor's actual financial condition with the picture he paints of it. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re *Denenberg*, 37 B.R. 267.—Bankr 3353(12.15).

Bkrty.E.D.N.Y. 1994. The materially false requirement of exception to discharge for false financial statements connotes more than merely untrue or erroneous statement; "materially false financial statement" is one which is substantially inaccurate and paints substantially untruthful picture of debtor's financial condition by misrepresenting information of type which would normally affect decision to grant credit. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re *Bodenstein*, 168 B.R. 23.—Bankr 3353(12.15).

Bkrty.E.D.Okla. 1989. "Materially false financial statement," such as would render debt nondischargeable, is one in which there is omission, concealment, or understatement of any of the debtor's

material liabilities. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re *Carter*, 101 B.R. 702.—Bankr 3353(12.20).

Bkrty.D.Utah 1986. For purpose of determining whether debt is nondischargeable on basis of false financial statement, "materially false financial statement" is one which paints substantially untruthful picture of debtor's financial condition by misrepresenting information of type which would normally affect decision to grant credit; information must not only be substantially inaccurate, but it must also be information which affected creditor's decision-making process. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re *Iverson*, 66 B.R. 219.—Bankr 3353(12.15).

MATERIALLY FALSE MISREPRESENTATION

Bkrty.S.D.Ohio 1992. Debtor's silence may constitute "materially false misrepresentation" prohibiting discharge of indebtedness. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re *Begun*, 136 B.R. 490.—Bankr 3353(4).

MATERIALLY FALSE REPRESENTATION

S.D.N.Y. 1939. A statement in application for \$200 loan that applicant's total liabilities did not exceed \$500 whereas applicant had liabilities of \$866.16, was a "materially false representation" precluding discharge of applicant in bankruptcy.—In re *Levine*, 28 F.Supp. 819.—Bankr 3273.1.

Bkrty.M.D.Fla. 2002. Chapter 13 debtors made a "materially false representation," for purposes of section of the Bankruptcy Code providing for revocation of confirmation orders procured by fraud, where debtors' plan provided for payment of creditor's priority claim outside the plan, thus implying that there was an agreement regarding the treatment of creditor's claim outside the plan, when, in fact, creditor never expressly or impliedly agreed to such treatment. Bankr.Code, 11 U.S.C.A. §§ 1322(a)(2), 1325(a)(1), 1330(a).—In re *Randolph*, 273 B.R. 914.—Bankr 3715(14).

MATERIALLY FALSE REPRESENTATIONS

Bkrty.D.Utah 1986. Financial statements given by debtor to seller and manufacturer of farm equipment contained "materially false representations" pertaining to debtor's financial condition, for purpose of determining whether resulting debt was nondischargeable, where statements misrepresented identity of party actually making equipment purchase, falsely indicated that equipment was for debtor's use on debtor's own farm, rather than for hiring out, mischaracterized accounts receivable as cash, claimed ownership to large and varying acreages of real estate, and failed to list substantial amounts of liabilities owed to other creditors. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re *Iverson*, 66 B.R. 219.—Bankr 3353(12.15).

MATERIALLY FALSE STATEMENT

C.A.5 (Tex.) 1978. Failure to disclose, in a bill of sale presented to a bank in connection with a loan application, that at least some of the equip-

ment referred to in the bill of sale was subject to a lien would constitute a "materially false statement" within meaning of statute which provides penalties for making a "materially false statement" to a federally insured bank in a loan application. 18 U.S.C.A. § 1014.—*U.S. v. Greene*, 578 F.2d 648, certiorari denied 99 S.Ct. 1056, 439 U.S. 1133, 59 L.Ed.2d 96.—*Fraud 68*.

E.D.N.Y. 1943. Where statement filed by bankrupt for purpose of obtaining money on credit as co-maker provided that bankrupt should fill in all blanks, using word "no" or "none" if necessary, and that bankrupt warranted that each statement was true, bankrupt's failure to fill in portion of statement directing him to list all debts due by him, although bankrupt at that time was indebted to several persons, barred discharge on ground that bankrupt made "materially false statement" in writing to induce making of loan.—*In re Gregor*, 50 F.Supp. 918.—*Bankr 3273.1*.

E.D.Wis. 1986. False inclusion of debtor's wife's assets valued at \$120,000 on financial statement was "materially false statement" for purposes of nondischargeability, where wife was not obligor on bank loan, and bank was not seeking information regarding her financial status. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*Regency Nat. Bank v. Blatz*, 67 B.R. 88.—*Bankr 3353(12.30)*.

Bkrcty.S.D.Fla. 1996. Sign hung by Chapter 7 debtor-physician on wall of his office, as required by Florida Financial Responsibility Act, stating that physician had decided not to carry medical malpractice insurance, as permitted under Florida law, and that Florida law imposes penalties on uninsured physicians who fail to pay adverse judgments was not "materially false statement," as required to except medical malpractice judgment debt from discharge under discharge exception for debts based on use of materially false statement respecting debtor's or insider's financial condition, where statutory language set forth in sign was limited in that noninsured physician had to simply, in lieu of carrying medical malpractice insurance, demonstrate financial responsibility, and sign did not state that physician would satisfy all adverse judgments but only provided that physician would either satisfy adverse judgment or be subject to penalties pursuant to Florida law. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B); *West's F.S.A.* §§ 458.320(4)(b), 458.331.—*In re Pouliot*, 196 B.R. 641.—*Bankr 3353(12.15)*.

Bkrcty.W.D.Ky. 1985. For purposes of excepting from discharge a debt arising from the use of a false financial statement to obtain property or credit, a "materially false statement" is one which paints a substantially untrue picture of debtor's financial condition by misrepresenting information of the type which would normally affect the decision to grant credit. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Bridges*, 51 B.R. 85.—*Bankr 3353(12.15)*.

Bkrcty.W.D.Ky. 1982. Omission, concealment or understatement of liabilities constitutes a "materially false statement" for purposes of exception to

dischargeability of debts for false financial statements. *Bankr.Code*, 11 U.S.C.A. § 523(a), (a)(2)(B).—*In re Aldrich*, 16 B.R. 825.—*Bankr 3353(12.20)*.

Bkrcty.W.D.Mo. 1989. "Materially false statement," within meaning of exception to discharge for statements made in financing statement, is one that is substantially inaccurate. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B)(i).—*In re Bundy*, 95 B.R. 1004.—*Bankr 3353(12.15)*.

Bkrcty.E.D.N.Y. 1996. "Materially false statement" under discharge exception for false financial statements is one that is substantially inaccurate with respect to information that would have affected creditor's decision-making process. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Caulfield*, 192 B.R. 808.—*Bankr 3353(12.15)*.

Bkrcty.E.D.N.Y. 1996. For purposes of false financial statement exception to discharge, "materially false statement" is statement that paints substantially untruthful picture of financial condition by misrepresenting information of type which would normally effect decision to grant credit. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Launzel-Pennes*, 191 B.R. 6.—*Bankr 3353(12.15)*.

Bkrcty.E.D.N.Y. 1993. "Materially false statement," within meaning of discharge exception for use of materially false written financial statement, is one which is substantially inaccurate, with respect to information which would have affected creditor's decision-making process. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Kelley*, 163 B.R. 27.—*Bankr 3353(12.15)*.

Bkrcty.S.D.N.Y. 1993. "Materially false statement" under exceptions to discharge statute is one which is substantially false. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Reisman*, 149 B.R. 31.—*Bankr 3353(12.15)*.

Bkrcty.N.D.Ohio 1991. Debtor's failure to list all of her outstanding obligations on financial statement submitted in connection with loan application resulted in "materially false statement," within meaning of statutory exception to discharge. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Torres*, 139 B.R. 659.—*Bankr 3353(12.15)*.

Bkrcty.E.D.Va. 1994. For purposes of exception to discharge for false financial statements, "materially false statement" presents substantially untruthful picture of financial condition by misrepresenting information of type which would normally affect decision to grant credit. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Abdul'Faruq*, 175 B.R. 618.—*Bankr 3353(12.15)*.

Bkrcty.E.D.Wis. 1988. Omission, concealment or understatement of any of debtor's material liabilities constitutes "materially false statement" for purposes of finding debt nondischargeable on basis of use of false statement in writing. *Bankr.Code*, 11 U.S.C.A. § 523(a)(2)(B).—*In re Jones*, 88 B.R. 899.—*Bankr 3353(12.20)*.

Md. 1986. Bar applicant who effectively disclosed any drug involvement in her past through

discussions in character interview and revelations made pursuant to drug question on bar application but who responded “no” to question concerning existence of unfavorable incidents which may have bearing on character or fitness to practice law did not make “materially false statement” or “deliberately fail to disclose a material fact” in connection with her application. Code of Prof.Resp., DR1-101(A).—Attorney Grievance Com’n of Maryland v. Dee, 511 A.2d 516, 306 Md. 799.—Atty & C 5.

Mich.App. 1996. For purposes of perjury charge, a “materially false statement” is one that could have affected course or outcome of proceeding. M.C.L.A. § 750.422.—People v. Honeyman, 546 N.W.2d 719, 215 Mich.App. 687.—Perj 11(2).

Mich.App. 1983. A “materially false statement” sufficient to support a conviction of perjury is one which could have affected the course or outcome of the proceeding. M.C.L.A. § 750.423; U.S.C.A. Const.Amend. 5.—People v. Jeske, 341 N.W.2d 778, 128 Mich.App. 596.—Perj 11(2).

MATERIALLY FALSE STATEMENT IN WRITING

La.App. 4 Cir. 1970. Borrowers did not by listing certain debts on one side of loan application and by leaving blank line on other side for “total” indebtedness make “materially false statement in writing” that total indebtedness was listed, and borrowers could thus assert discharge in bankruptcy as defense in suit on note. Bankr.Act, § 17, sub. a(2), 11 U.S.C.A. § 35(a) (2).—Great Southern Mortg. & Loan Corp. v. Dillon, 230 So.2d 901.—Bankr 3273.1.

MATERIALLY FALSE STATEMENTS IN WRITING

Neb. 1969. Check drawn on bank in which account of maker has been overdrawn does not constitute “materially false statements in writing” which will bar discharge in bankruptcy of the maker. Bankr.Act, § 17, 11 U.S.C.A. § 35.—Swanson Petroleum Corp. v. Cumberland, 167 N.W.2d 391, 184 Neb. 323.—Bankr 3353(9).

MATERIALLY HARMFUL IMPACT

N.Y.A.D. 1 Dept. 1997. Defendant, who was English lawyer representing Abu Dhabi principals of foreign bank, produced “materially harmful impact” upon forum state’s governmental processes which evidence tampering statute was designed to prevent when he committed foreign act of withholding bank executive’s diary from bank’s foreign liquidator, and thus intent-based jurisdictional statute allowed forum state to charge him with tampering and conspiracy, where evidence indicated that he withheld diary because he believed liquidator would turn it over to authorities in forum state who were conducting criminal investigation of bank, even if diary’s materiality to that investigation could not be proven. McKinney’s CPL §§ 20.10, subd. 4, 20.20, subd. 2(b); McKinney’s Penal Law §§ 215.35, subd. 1, 215.40, subd. 2.—People v. Sandy, 666 N.Y.S.2d 565, 236 A.D.2d 104, appeal denied 672 N.Y.S.2d

856, 91 N.Y.2d 977, 695 N.E.2d 725.—Crim Law 97(3).

MATERIALLY IMPROVED

N.Y.Sup. 1997. Town “materially improved” condemned property when it expended between 60 and 72% of property’s value on site improvements and building construction, for purposes of requirement that condemned property must not have been materially improved for former fee owner to acquire right of first refusal following condemnor’s abandonment of property. McKinney’s EDPL § 406(A).—Shapiro v. Othmer, 657 N.Y.S.2d 292, 172 Misc.2d 231, affirmed 671 N.Y.S.2d 116, 249 A.D.2d 400, leave to appeal denied 678 N.Y.S.2d 594, 92 N.Y.2d 808, 700 N.E.2d 1230.—Em Dom 323.

MATERIALLY INCREASED

D.Md. 1940. In order to entitle seamen to discharge and payment of accumulated wages under Norwegian law, because of fact that war risk has been “materially increased” after engagement of seamen, there must be some new development which is capable of ascertainment by proof of fact, rather than susceptible only of divergent opinion, and there must be something more than mere fluctuation of intensity of an already existing warfare.—The Austvard, 34 F.Supp. 431.—Seamen 12.

Colo.App. 1994. Filing of habitual criminal charges against defendant “materially increased” risk that sureties contractually assumed under bail bond agreement by increasing mandatory minimum sentence defendant faced if convicted from 24 years and one day to life imprisonment; therefore, surety’s obligation on bond terminated.—People v. Jones, 873 P.2d 36.—Bail 74(1).

MATERIALLY INFLUENCES

Mass. 2003. Trial error “materially influences” the verdict, as required for review of waived post-conviction claim under miscarriage of justice standard, only if the appellate court is uncertain that the defendant’s guilt was fairly adjudicated; the court must be left with serious doubt about whether the verdict might have been different had the error not been made.—Com. v. Kilburn, 780 N.E.2d 1237, 438 Mass. 356.—Crim Law 1437.

MATERIALLY INJURE

Ky. 1932. Advantages to bridge company owning bridge across Ohio river from annexation by city of part of river held so doubtful and disproportionate to undoubted disadvantages that proposed annexation, with increased taxation would entail as to “materially injure” such property and render annexation improper. Ky.St. § 3483.—City of Russell v. Ironton-Russell Bridge Co., 60 S.W.2d 628, 249 Ky. 307.—Mun Corp 29(3).

MATERIALLY INJURED

Nev. 1994. Under statute providing that governing body may abandon property if it is satisfied that public will not be “materially injured” by proposed

abandonment, district court improperly focused on benefits of abandonment, rather than any material injury abandonment might cause. N.R.S. 278.480, subd. 4.—City of Reno v. Estate of Wells, 885 P.2d 545, 110 Nev. 1218.—Mun Corp 657(3).

MATERIALLY INTERFERE WITH NORMAL PUBLIC USE

Wash. 1992. Placement of locked gates at each of three-mile stretch of abandoned railroad right-of-way did not “materially interfere with normal public use” of creek’s shoreline, and thus, placement was not “substantial development” within meaning of Shoreline Management Act; even if access on right-of-way was required to preserve any “normal public use” of water and shoreline of creek, one could simply walk around gates and proceed on right of way. West’s RCWA 90.58.030(3)(e).—Cowiche Canyon Conservancy v. Bosley, 828 P.2d 549, 118 Wash.2d 801, reconsideration denied.—Zoning 384.1.

MATERIALLY MISLEADING

C.A.8 1997. Offering memorandum that broker-dealer used in connection with sale of client’s stock was “materially misleading,” for purposes of Securities and Exchange Commission’s (SEC) disciplinary action against broker-dealer for violation of National Association of Securities Dealers’ (NASD) Rules of Fair Practice.; memorandum failed to disclose that purpose for which client was established—operating medical waste disposal facility—was no longer being pursued and that number of costs and liabilities had been incurred.—Everest Securities, Inc. v. S.E.C., 116 F.3d 1235.—Sec Reg 40.15.

N.Y.A.D. 3 Dept. 1989. Advertisement for sale of saw would have led ignorant, unthinking, or credulous person to believe that saw would be physically available at discounted price until end of sale; thus, total unavailability of any saw during sale period at three of defendant’s area stores rendered advertisement “materially misleading.” McKinney’s General Business Law § 350—a, subd. 1.—De Santis v. Sears, Roebuck and Co., 543 N.Y.S.2d 228, 148 A.D.2d 36.—Cons Prot 7.

MATERIALLY PARTICIPATE

S.D.Cal. 1960. Absentee farm owner who held certain broad supervisory powers over those who as lessees actually engaged in farming did not “materially participate” in production or management of production of agricultural commodities within Social Security Act and was not entitled to old age benefits under Social Security Act. Social Security Act, § 211(a) (1), 42 U.S.C.A. § 411(a) (1).—Conley v. Flemming, 190 F.Supp. 906.—Social S 134.

MATERIALLY PARTICIPATED

C.A.8 (Mo.) 1966. Farm owner who had written agreement with his tenants designating owner’s managerial responsibilities, who made important decisions concerning production of the crops, who improved the money crops, who materially participated in the financing and who supervised farms by

letter and telephonic communication with his tenants and by employment of a farmer brother-in-law and who actually visited the farms from two to four times a month during the growing season “materially participated” in the production and management of production of crops and was entitled to social security benefits. Social Security Act, §§ 205(g), 211(a) (1), 42 U.S.C.A. §§ 405(g), 411(a) (1); 28 U.S.C.A. § 1291.—Hoffman v. Gardner, 369 F.2d 837.—Social S 134.

MATERIALLY PREJUDICED

Ohio App. 8 Dist. 1994. Putative father was not “materially prejudiced” by mother’s alleged dilatory conduct in bringing paternity proceedings and, thus, laches did not bar that action; putative father’s generic assertion of hardship arising from allegedly excessive award was insufficient to rise to level of material prejudice, and, despite putative father’s claim that he had lost all rights of visitation, custody and participation in direction of child’s growth and development during her formative years, child was nine years old and had many formative years remaining.—Seegert v. Zietlow, 642 N.E.2d 697, 95 Ohio App.3d 451.—Child 38.

MATERIALLY PREJUDICIAL

Mo.App. S.D. 2001. There is a strong presumption that a time extension on a senior mortgage or obligation, standing alone, is not “materially prejudicial” to intervening interests, so that such extension does not provide a basis for rearranging the priorities in favor of junior lienholders. Restatement (Third) of the Law of Property, Mortgages, § 7.3 cmt. b.—Burney v. McLaughlin, 63 S.W.3d 223, rehearing, transfer denied, and transfer denied.—Mtg 186(3).

Mo.App. S.D. 2001. Eight extensions of maturity date of senior deed of trust over six-year period, in and of themselves, were not “materially prejudicial” to junior deed of trust holder and therefore did not provide a basis for rearranging the priorities; while senior holder reaped additional interest payments, the principal owed on junior deed of trust was reduced from approximate balance of \$1.077 million to approximately \$932,000, and junior holder received over \$762,000 in payments after the original maturity date for the senior deed of trust.—Burney v. McLaughlin, 63 S.W.3d 223, rehearing, transfer denied, and transfer denied.—Mtg 159, 306.

Mo.App. S.D. 2001. Modifications of senior deed of trust, by increasing the interest rate, adding appraisal fees, loan extension fees, and renewal fees, and adding cross-collateralization, cross-default, and waiver-of-bankruptcy-stay provisions, were “materially prejudicial” to holder of junior deed of trust, as basis for rearranging the priorities.—Burney v. McLaughlin, 63 S.W.3d 223, rehearing, transfer denied, and transfer denied.—Mtg 159, 305.

MATERIALLY RELATED

Bkrcty.D.R.I. 1998. Chapter 7 debtor’s false statements regarding price and value of seafood

products business that he sold less than one month prepetition were “materially related” to his bankruptcy case where sale proceeds were, or should have been, an asset of the bankruptcy estate. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Sears, 225 B.R. 270.—Bankr 3283.

MATERIALLY RELEVANT

Ill. 2001. Evidence which is “materially relevant” to a defendant’s claim of actual innocence, within the scope of the statute permitting a defendant to request that physical evidence be subjected to scientific testing that was not available at the time of trial, is simply evidence which tends to significantly advance that claim. S.H.A. 725 ILCS 5/116-3.—People v. Savory, 258 Ill.Dec. 530, 756 N.E.2d 804, 197 Ill.2d 203, rehearing denied.—Crim Law 1590.

Ill. 2001. Source of bloodstains found on trousers defendant was alleged to have worn on night of murders was not “materially relevant” to his claim of actual innocence, as required to enable defendant to compel submission of bloodstains to scientific testing not available at time of his original trial, where state’s case rested primarily on other evidence, and state mentioned bloodstain evidence at trial only in response to defendant’s own closing argument; bloodstain evidence was essentially collateral issue at trial, and test result favorable to defendant would not have significantly advanced his claim of actual innocence. S.H.A. 725 ILCS 5/116-3.—People v. Savory, 258 Ill.Dec. 530, 756 N.E.2d 804, 197 Ill.2d 203, rehearing denied.—Crim Law 1590.

MATERIALLY SIGNIFICANT DISADVANTAGE

C.A.8 (Neb.) 2000. County’s permanent assignment of correctional officer to extremely stressful position after he filed employment discrimination charge was “materially significant disadvantage,” sufficient to sustain claim of retaliation under Title VII, where county routinely rotated employees through position because of stressful nature of its duties, officer was only person who was ever assigned full-time to position, and warden stated that officer would not be allowed to re-apply for his former position in part because he filed administrative complaint. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—Ross v. Douglas County, Nebraska, 234 F.3d 391.—Prisons 7.

MATERIALLY SIMILAR

C.A.11 (Ala.) 2001. For qualified immunity purposes, a preexisting precedent is “materially similar” to the circumstances facing an official when the specific circumstances facing the official are enough like the facts in the precedent that no reasonable, similarly-situated official could believe that the factual differences between the precedent and the circumstances facing the official might make a difference to the conclusion about whether the official’s conduct was lawful or unlawful, in the light of the precedent.—Marsh v. Butler County, Ala., 268 F.3d 1014.—Civil R 214(2).

MATERIALLY UNBALANCED BID

Fed.Cl. 1999. A “materially unbalanced bid” on a government contract is one based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and there is a reasonable doubt that the bid will result in the lowest overall cost—Anderson Columbia Environmental, Inc. v. U.S., 43 Fed.Cl. 693.—U S 64.30.

MATERIAL MAN

C.A.9 (Alaska) 2001. Defendant in action against contractor and its Miller Act surety was a “materialman” rather than a “subcontractor,” though it supplied almost all the rock and its contract represented over 40% of contractor’s total contract cost, though the material did not come from pre-existing inventory, and though the contractor agreed to provide help to such defendant so that it could complete the contract, where such defendant was not involved in any other portion of the overall contract, the product supplied was in no way unique or complex, but was clearly merely material, and the support agreement did not change such defendant’s involvement in the project, nor require it to do any more than it had originally agreed to do. Miller Act, § 1 et seq., 40 U.S.C.A. § 270a et seq.—U.S. v. Nugget Construction, Inc., 19 Fed.Appx. 705.—U S 67(6).

C.A.9 (Ariz.) 1992. In distinguishing “subcontractor” from “materialman” for purposes of Miller Act, courts apply balancing test with certain factors tending to weigh in favor of subcontractor relationship, particularly where company assumed significant and definable part of construction project, and other factors tending to weigh in favor of materialman relationship. Miller Act, §§ 1-4, 2(a), 40 U.S.C.A. §§ 270a-270d, 270b(a).—U.S. for Use and Ben. of Conveyor Rental & Sales Co. v. Aetna Cas. & Sur. Co., 981 F.2d 448.—U S 67(5.1), 67(6).

C.A.6 (Ky.) 1989. Supplier of windows to general contractor for public construction project was “materialman,” rather than “subcontractor,” within meaning of Kentucky statute that requires payment bond to protect all persons supplying labor and material to contractor or subcontractors, and, thus, payment bond statute did not protect manufacturer of windows, even though windows were supplied in accordance with specifications in prime contract. KRS 45A.190(1).—Safeco Ins. Co. of America v. W.B. Browning Const. Co., Inc., 886 F.2d 807.—Pub Contr 53.

C.A.5 (La.) 1991. Under Miller Act, distinction between “subcontractor” and “materialman” turns on substantiality and importance of relationship between middle party and prime contractor; only middle party who has taken responsibility for large and definable part of construction project is “subcontractor,” otherwise, he is “materialman.” Miller Act, § 2(a), 40 U.S.C.A. § 270b(a).—U.S. for Use and Benefit of Gulf States Enterprises, Inc. v. R.R. Tway, Inc., 938 F.2d 583.—U S 67(5.1).

C.A.5 (La.) 1963. Where prime contractor for construction of locks on Mississippi River contract-

ed to purchase its sand and gravel needs from company, such company was "materialman" and not "subcontractor," and benefits of Miller Act were unavailable to suppliers of company. Miller Act, § 1, 40 U.S.C.A. § 270a.—Brown & Root, Inc. v. Gifford-Hill & Co., 319 F.2d 65.—U S 67(6).

C.A.10 (N.M.) 1968. Supplier of cabinets was a material supplier to a "subcontractor," and not a remote material supplier to a "materialman" within the Miller Act, where party supplied with cabinets had entered into an agreement with general contractor whereby such party took from general contractor a specific part of the original contract, namely, the furnishing, in accordance with plans and specifications, of all kitchen cabinets required under the original contract. Miller Act, §§ 1, 2, 40 U.S.C.A. §§ 270a, 270b.—J. W. Cooper Const. Co. v. Public Housing Administration for Use and Benefit of Rio Grande Steel Products Co., 390 F.2d 175.—U S 67(6).

C.A.10 (N.M.) 1966. Where one supplier undertook to furnish concrete to principal contractor for government project and the concrete was in no way a customized material, there was no substantial delegation of any portion of prime contractor's contract and that supplier was a "materialman" rather than a subcontractor so that supplier of sand and gravel for the concrete could not recover payment for those materials from prime contractor under his bond. Miller Act, §§ 1 et seq., 2b(a), 40 U.S.C.A. §§ 270a et seq., 270b(a).—U. S. for Use of Bryant v. Lembke Const. Co., 370 F.2d 293.—U S 67(6).

Ct.Cl. 1969. Architect who prepared plans for ship contractor was not a "laborer" or "materialman" entitled to assert its claim against fund withheld by government from prime contractor.—J. J. Henry Co. v. U. S., 411 F.2d 1246, 188 Ct.Cl. 39.—U S 74.2.

C.C.A.9 (Or.) 1935. Person contracting with contractor to furnish crushed rock needed in performance of county road construction contract held not "subcontractor" but "materialman," regardless of whether rock was available as commodity in open market, and hence claim for rental of machinery to such person was not recoverable under contractor's bond. Rem.Rev.Stat.Wash. § 1159.—Northwest Roads Co. v. Clyde Equipment Co., 79 F.2d 771.—High 113(5).

C.C.A.9 (Or.) 1935. State court's decision as to who is "subcontractor" or "materialman" under statutes relating to contractor's bond held binding on Circuit Court of Appeals (Rem. Rev. Stat. Wash. § 1159).—Northwest Roads Co. v. Clyde Equipment Co., 79 F.2d 771.—Fed Cts 407.1.

E.D.La. 1998. Under Louisiana law, "materialman" is one who supplies material, either manufactured or fabricated, for use in construction.—Wilson Industries, Inc. v. Aviva America, Inc., 63 F.Supp.2d 747, affirmed 185 F.3d 492.—Mech Liens 83.

E.D.La. 1998. Under Louisiana law, fabricator who does not engage in any process that incorpo-

rates item furnished is "materialman."—Wilson Industries, Inc. v. Aviva America, Inc., 63 F.Supp.2d 747, affirmed 185 F.3d 492.—Mech Liens 83.

S.D.Miss. 1988. Entity which entered into purchase order contract with prime contractor to furnish all miscellaneous steel and iron products for Miller Act project was a "materialman," rather than a subcontractor, and therefore, entity could not recover on Miller Act payment bond; entity did no on-site work but simply shipped materials to jobsite, did not receive progress payments, and gave no performance bond to primary contractor. Miller Act, §§ 1-4, 1(a)(1, 2), 40 U.S.C.A. §§ 270a-270d, 270a(a)(1, 2).—U.S. for Use and Ben. of Clark v. Lloyd T. Moon, Inc., 698 F.Supp. 665.—U S 67(6).

D.N.J. 1943. A materialman who had a contract with a contractor on a government housing project was a "materialman" and not a "subcontractor" within meaning of Miller Act giving anyone having direct contractual relations with a subcontractor but not with contractor a right of action on contractor's payment bond and hence plaintiff furnishing material to materialman was not entitled to recover on payment bond. 40 U.S.C.A. §§ 270a, 270b.—U.S., for Use and Benefit of Calvin Tomkins Co. v. Clifford F. MacEvoy Co., 49 F.Supp. 81, reversed 137 F.2d 565, certiorari granted 64 S.Ct. 267, 320 U.S. 733, 88 L.Ed. 433, reversed 64 S.Ct. 890, 322 U.S. 102, 88 L.Ed. 1163.—Princ & S 63; U S 67(6), 69(6).

E.D.N.C. 1996. Term "materialman," for purposes of provision of North Carolina's six-year statute of repose for claims arising from improvements to real property which includes actions against persons furnishing materials, refers to one who furnishes materials to jobsite either directly to owner of premises or to contractor or subcontractor on job, and who furnishes materials directly to ultimate consumer, while "remote manufacturer," who would come within products liability statute is one who places product directly into stream of commerce and has no intent to sell or deliver directly to end user. N.C.G.S. § 1-50(5).—National Property Investors, VIII v. Shell Oil Co., 950 F.Supp. 710.—Lim of Act 30.

N.D.Ohio 1991. The Ohio statute of repose barred worker's personal injury claim against manufacturer of crane which crushed worker's leg; crane was "improvement to real property," within meaning of the statute, and manufacturer was not "materialman" exempt from the protection of the statute. Ohio R.C. § 2305.131.—Hall v. Harnischfeger Corp., 785 F.Supp. 675.—Lim of Act 31.

N.D.Okla. 1964. One who had right to remove and use rock material from quarry and under arrangement with subcontractor furnished such to it for use on highway project was "materialman" and "furnisher" for Miller Act purposes, even though subcontractor processed rock by crushing it and moving it to project. Miller Act, § 2, 40 U.S.C.A. § 270b.—U. S. for Use and Benefit of Pool Const. Co. v. Smith Road Const. Co., 227 F.Supp. 315.—U S 67(6).

M.D.Pa. 1938. The word "materialman" is defined as persons who furnish materials to be used in the construction of or erection of ships, houses, or buildings, but is not restricted to persons who are in the business of furnishing materials or have such materials in their possession.—U. S. Fidelity & Guaranty Co., for Use of Reedy v. American Sur. Co. of New York, 25 F.Supp. 280.

E.D.Tenn. 1975. Supplier which brought suit under Miller Act against prime contractor and surety for steel furnished for construction of government project did not take responsibility for such a large and definable part of the project as to constitute "supplier" a "subcontractor" rather than a mere "materialman," and supplier was only required to fabricate and furnish steel called for by the prime contract and was not bound by the special provisions thereof. Miller Act, § 1 et seq., 40 U.S.C.A. § 270a et seq.; Davis-Bacon Act, § 1 et seq., 40 U.S.C.A. § 276a et seq.; Contract Work Hours Standards Act, § 101 et seq., 40 U.S.C.A. § 327 et seq.—U.S. v. Ellis Const. Co., Inc., 398 F.Supp. 719.—U S 67(6).

E.D.Tex. 1995. Supplier of subcomponents used in Chapter 11 debtor's high pressure vessels qualified as "materialman" for purposes of Texas constitutional mechanics' lien, where supplier provided to debtor certain components such as nozzles, flanges, stubs and other fittings that were incorporated into large, complex device for separating oil under extremely cold conditions. Vernon's Ann.Texas Const. Art. 16, § 37.—In re A & M Operating Co., Inc., 182 B.R. 997, affirmed 84 F.3d 433.—Bailm 18(2).

Bkrtcy.E.D.Tex. 1993. Supplier of subcomponents used in Chapter 11 debtor's high pressure vessels was "materialman," for purpose of determining supplier's entitlement to Texas constitutional mechanics' lien. Vernon's Ann.Texas Const. Art. 16, § 37.—In re A & M Operating Co., Inc., 182 B.R. 986, affirmed in part, reversed in part 182 B.R. 997, affirmed 84 F.3d 433.—Mech Liens 83.

Ala.Civ.App. 1974. Firm which was to furnish structural steel, ornamental iron, and miscellaneous works for prime contractor was not merely a "materialman" but a "subcontractor," within purview of statute dealing with bonds for public works, where much of material supplied by it had to be custom fabricated to meet specifications for elementary school building under construction; and since supplier of materials to such firm was not merely a materialman's materialman, it was entitled to protection afforded by statutory bond. Code of Ala., Tit. 50, § 16.—Sparks Const., Inc. v. Newman Bros., Inc., 288 So.2d 749, 51 Ala.App. 690.—Schools 81(2).

Ariz. 1962. California corporation, which fabricated and assembled kits for construction of homes, and which marketed package units in parts of Arizona through franchise dealer agreements with licensed contractor doing business in Arizona, was "materialman" entitled to lien on realty in Arizona of owners, who requested contractor to order material for construction of home on their realty.

A.R.S. § 33-981, subd. B.—Ranch House Supply Corp. v. Van Slyke, 370 P.2d 661, 91 Ariz. 177.—Mech Liens 83.

Ariz.App. Div. 1 1979. Where sand and gravel business was under contract with contractor on state highway resurfacing projects, and trucking corporation entered into agreement with the sand and gravel business for rental of trucks in which to haul rock material for such projects, the sand and gravel business was "materialman" and not "subcontractor," and thus the trucking corporation did not have cause of action against the contractors' licensing bond. A.R.S. §§ 33-981, 34-222[A][2]; § 32-1152, Laws 1978, c. 85.—B. J. Cecil Trucking, Inc. v. Tiffany Const. Co., 597 P.2d 184, 123 Ariz. 31.—High 113(5).

Ariz.App. Div. 1 1975. Where rock chips provided by supplier for use in highway seal coating were similar to chips used in other seal coated operations and were available in open market from sand and gravel companies, and contract between supplier and prime contractor did not call for supplier's performance of any part of essential operation of applying rock chips and other materials to existing highway surface, such supplier was "materialman" rather than "subcontractor" for purposes of contractor's bond.—Tiffany Const. Co. v. Hancock & Kelley Const. Co., 539 P.2d 978, 24 Ariz.App. 504.—High 113(5).

Ark.App. 1991. Where distinction is made between "subcontractor" and "materialman," person, to become subcontractor rather than materialman, must generally do something more than merely furnish materials; one who is simply employed to furnish materials, regardless of whether such materials be manufactured or whether he be required to transform or fabricate such materials into condition where it meets requirements of contract, or specifications, is nonetheless materialman within meaning of mechanics' lien laws.—American States Ins. Co. v. Tri Tech, Inc., 812 S.W.2d 490, 35 Ark.App. 134.—Mech Liens 83, 94.

Cal. 1917. One furnishing materials, to a person having a contract for all the brick and steel work in a building, was entitled to a materialman's lien, the person to whom the material was furnished being a "subcontractor" and not a mere "materialman," making the objections that a lien does not lie in favor of one who sells materials to a materialman inapplicable.—Bird v. American Sur. Co. of New York, 166 P. 1009, 175 Cal. 625.

Cal.App. 1 Dist. 1933. Where paving contract required use of patented process, licensee authorizing contractor to use patent was "materialman" and not "subcontractor" as regards right under contractor's bond of one furnishing material to licensee.—Garbutt v. Chappe, 21 P.2d 594, 131 Cal.App. 284.—Mun Corp 347(2).

Cal.App. 1 Dist. 1919. The test of whether lien claimant was a contractor or materialman is the relative value of the material and the labor supplied; the claimant being a "materialman" if the value of the labor is small in comparison with that

of the material.—*Ferger v. Gearhart*, 186 P. 376, 44 Cal.App. 245.—*Mech Liens* 83, 89.

Cal.App. 2 Dist. 1964. Essential feature which constitutes one a "subcontractor" rather than "materialman" is that in course of performance of prime contract he constructs a definite, substantial part of work of improvement in accord with plans and specifications of such contract.—*Piping Specialties Co. v. Kentile, Inc.*, 40 Cal.Rptr. 537, 229 Cal.App.2d 586.—*Mech Liens* 98.

Cal.App. 4 Dist. 1933. Where water softeners were sold to plumber who sold and installed them in defendant's building, installation being merely incidental, plumber was "materialman" and not "subcontractor" acting as owner's agent. Code Civ. Proc. § 1183.—*Harris & Stunston v. Yorba Linda Citrus Ass'n*, 26 P.2d 654, 135 Cal.App. 154.—*Mech Liens* 109.

Fla.App. 2 Dist. 1961. Lessee of digging equipment, who used equipment to remove marl from marl pit and delivered marl to road job site some seven or eight miles from marl pit, was "materialman" and not "subcontractor," and hence lessor could not recover for rental of equipment from general contractor and surety on statutory construction completion bond for road work performed for State. F.S.A. §§ 84.01 et seq., 84.01, 84.04, 255.05, 337.18.—*Troup Bros., Inc. v. State for Use and Benefit of Meadows Southern Const. Co.*, 135 So.2d 755.—*High* 113(5).

Fla.App. 4 Dist. 1983. Evidence that purported materialman merely supplied contractor with bulk order materials such as appliances which were in turn used by the contractor at its discretion in various different construction projects was sufficient to support finding that the supplier was not a "materialman" and thus was not entitled to foreclose a mechanic's lien on the improved property. West's F.S.A. § 713.01(11).—*Associated Distributors, Inc. v. Mix*, 440 So.2d 516.—*Mech Liens* 83.

Ind.App. 1 Dist. 1980. Where owner of property on which parking garage was to be built hired an architect, a structural engineer and a project supervisor and itself poured the foundation and ramps, erected the building and added extra bracing and an eighth-floor sports facility, the owner served as its own general contractor and the company which agreed to supply preformed and prestressed concrete beams according to the architect's specifications was a "materialman."—*City of Evansville v. Verplank Concrete & Supply, Inc.*, 400 N.E.2d 812.—*Mech Liens* 83.

Ind.App. 2 Div. 1915. Where C. contracted with an owner to furnish completed two flights of stairs according to specifications for the particular house to be constructed, but not to affix the stairs to the house, C. was a "materialman" only; and, where C. sublet the contract to H., who talked with the owner about it, and was given specifications by him, and delivered the stairs on the owner's premises, H. was not entitled to a lien, as he only furnished material to a materialman.—*Rudolph Hegener Co. v. Frost*, 108 N.E. 16, 60 Ind.App. 108.

Iowa 1934. Trucker, agreeing to haul sand for another who had subcontract with seller whose sales agreement provided for delivery at highway contractor's stock piles, held not "subcontractor" so that men who drove trucks and companies selling gasoline to trucker could file claims for wages and merchandise against percentages retained by highway commission, since seller was not "subcontractor," but "materialman". Code 1931, §§ 10299 et seq., 10305.—*Forsberg v. Koss Const. Co.*, 252 N.W. 258, 218 Iowa 818.—*High* 113(4).

Kan. 1990. Company which agreed with oil company to deliver and unload three fiberglass water tanks, but did not contract to, and did not, install tanks or in any way incorporate tanks into oil company's operation, was "materialman" to oil company, not "contractor." K.S.A. 55-208.—*Sfeld Engineering, Inc. v. Franklin Supply Co.*, 795 P.2d 60, 247 Kan. 146.—*Mines* 113.

Kan. 1982. Company that contracted to sell pipe to gas pipeline owner but did not install the pipe nor add to nor improve the pipe and, in fact, never had physical possession of the pipe, was a "materialman" that, had it not been paid, would have been entitled to a lien upon the pipeline property. K.S.A. 55-207.—*Interlake, Inc. v. Kansas Power & Light Co.*, 644 P.2d 385, 231 Kan. 251.—*Mines* 113.

La. 1936. Plumber who furnished labor and materials in performing jobs for defendant under verbal agreement without prices being stated and charged on alleged reasonable sum for each job held not a "laborer" or "materialman" but a "contractor," whose claim was controlled by ten-year, not one or three-year, period of prescription. LSA-Civ.Code, arts. 3534, 3538, 3544.—*Antoine v. Franichevich*, 167 So. 98, 184 La. 612.—*Lim of Act* 28(1).

La.App. 4 Cir. 1976. "Materialman" is one who supplies material either manufactured or fabricated for use in building.—*Leonard B. Hebert, Jr. & Co., Inc. v. Kinler*, 336 So.2d 922.—*Mech Liens* 83.

Mass. 1942. A wood mill operator who prepared and furnished a special interior trim for a city hall, in accordance with plans of general contractor, even though he performed no labor on the building, was not a "materialman" but a "subcontractor" within the statute securing claims for labor and material furnished to contractors and "subcontractors" on public works, and the city was properly ordered to pay out of moneys held by it on a claim for lumber sold to and so used by the mill operator. G.L.(Ter.Ed.) c. 149, § 29, as amended by St.1938, c. 361.—*Holt & Bugbee Co. v. City of Melrose*, 41 N.E.2d 562, 311 Mass. 424, 141 A.L.R. 319.—*Mun Corp* 373(2).

Mich. 1954. One combining or expending labor on another's premises in connection with furnishing of material to owner is a "contractor," not a "materialman," and hence required by statute to make out and give owner a sworn statement of number and names of, and amounts due, subcontractors or laborers and materialmen. Comp.Laws 1948,

§ 570.4.—Bent v. Carney, 64 N.W.2d 689, 339 Mich. 647.—Mech Liens 118.

Mich. 1927. One contracting to furnish material and to install it held “contractor,” not “materialman,” within statute requiring affidavit for mechanics’ lien (Comp.Laws 1915, § 14799).—Vander Horst v. Kalamazoo Apartments Corp., 215 N.W. 57, 239 Mich. 593.—Mech Liens 86.

Mich. 1908. Where a contract for the carpenter work of a building required “Davis or other equal steel stiffeners” for window frames, and the contractor sublet the contract for the installation of the window frames, and relator agreed to furnish, but not to install, the stiffeners in accordance with measurements furnished him by the subcontractor, and not in accordance with the specifications of the original contract, relator was a “materialman,” and not a “subcontractor,” and was therefore entitled to recover on the contractor’s bond given under Comp.Laws, §§ 10743-10745, requiring contractors of public buildings to give security for the payment of material furnished therefor.—People ex rel. Davis v. Campfield, 114 N.W. 659, 150 Mich. 675.

Mo.App. 1905. One who furnished galvanized iron and solder to a manufacturer, which was made by the latter into guttering and spouting, and delivered to a contractor, for a building, was not a “materialman” within the meaning of a condition of the contractor’s contract and bond requiring him to satisfy the claims of laborers and “materialmen.”—Berger Mfg. Co. v. Lloyd, 91 S.W. 468, 113 Mo. App. 205.

Neb. 1995. For purposes of Construction Lien Act, essential feature which constitutes one as “subcontractor” rather than “materialman” is that in course of performance of prime contract he constructs definite, substantial part of the work of improvement in accord with plans and specifications of such contract, not that he enters upon jobsite and does the construction there. Neb.Rev. St. § 52-125 et seq.—Blue Tee Corp. v. CDI Contractors, Inc., 529 N.W.2d 16, 247 Neb. 397.—Mech Liens 95.

Neb. 1980. A person who manufactures, purchases, or keeps for sale materials which enter into buildings, and who sells or furnishes such materials without performing any work or labor in installing or putting them in place is a “materialman” within meaning of mechanics’ lien statute. R.R.S.1943, § 52-101.—Ideal Basic Industries, Inc. v. Juniata Farmers Co-op. Ass’n, 289 N.W.2d 192, 205 Neb. 611.—Mech Liens 83.

N.J. 1961. Firm which contracted to furnish fill needed by general contractor on public construction project of Turnpike Authority was a “materialman” rather than a “subcontractor”, and supplier of dirt used by such firm in fulfilling its contract obligation was not entitled to protection of either municipal mechanics’ lien law or bond act as materialman of subcontractor. N.J.S. 2A:44-125 et seq., 143 et seq., N.J.S.A.—Morris County Indus. Park v. Thomas Nicol Co., 173 A.2d 414, 35 N.J. 522.—Turnpikes 17.

N.J.Super.A.D. 1997. Township that disposed of sludge from sewage treatment facility of another municipality, which was delivered to township pursuant to its contract with subcontractor hired to clean and remove sludge from anaerobic digesters at this other facility as part of public project to upgrade and expand facility, could not be considered a “materialman” on this project, for purposes of the Municipal Mechanics’ Lien Law; township did not deliver any supplies to project, but simply provided service which allowed basic work of renovation and rehabilitation to proceed. N.J.S.A. 2A:44-126.—Township of Parsippany-Troy Hills v. Lisbon Contractors, Inc., 696 A.2d 1129, 303 N.J.Super. 362, certification denied 704 A.2d 17, 152 N.J. 187.—Mun Corp 373(2).

N.J.Super.A.D. 1997. “Materialman” or “supplier,” within meaning of the Municipal Mechanics’ Lien Law, is one who provides product which becomes part of the whole. N.J.S.A. 2A:44-126.—Township of Parsippany-Troy Hills v. Lisbon Contractors, Inc., 696 A.2d 1129, 303 N.J.Super. 362, certification denied 704 A.2d 17, 152 N.J. 187.—Mun Corp 373(2).

N.J.Ch. 1906. The term “materialman” does include a subcontractor who excavated the cellar of a building with his teams and laborers at a specified price per cubic yard.—McNab & Harlin Mfg. Co. v. Paterson Bldg. Co., 63 A. 709, 71 N.J.Eq. 133, affirmed 67 A. 103, 72 N.J.Eq. 929.

N.J.Ch. 1904. Subcontractors, such as plumbers, plasterers, and painters, who supply the material and put it into the building, are not “materialmen” within the meaning of Laws 1898, p. 538, c. 226, § 3, N.J.S.A. 2:60-116, providing that when a contractor shall refuse to pay any person who has furnished materials for the erection of a building, for which contract has been filed, it shall be the duty of such “materialman” to give written notice, etc., in order to procure a lien.—Beckhard v. Rudolph, 59 A. 253, 68 N.J.Eq. 315, affirmed 63 A. 708, 68 N.J.Eq. 749, reversed 63 A. 705, 68 N.J.Eq. 740.

N.M. 1994. Four factors that assist in distinguishing between “subcontractor” and “materialman” are whether the party performs some of the work owner originally contracted; whether work performed is substantial; whether custom in the trade considers goods supplied common or prepared to conform to specifications of contract; and intent of parties.—State ex rel. Regents of New Mexico State University v. Siplast, Inc., 877 P.2d 38, 117 N.M. 738.—Mech Liens 83, 105.

N.Y. 1969. Gravel company which had contract with general contractor, which had a contract with the state for construction of parkway, was a “materialman” and not a “subcontractor” within meaning of the Lien Law, and supplier of trucks and highlifts with drivers and operators to gravel company was not entitled to a lien on monies of the state, though gravel company loaded the gravel, put gravel in place, and gravel company was paid on basis of engineer’s measure in place. Lien Law §§ 2, subds. 10, 12, 5.—A & J Buyers, Inc. v. Johnson, Drake &

Piper, Inc., 303 N.Y.S.2d 841, 25 N.Y.2d 265, 250 N.E.2d 845.—High 10.

N.Y. 1911. Code Civ.Proc. § 3414, makes a laborer's or materialman's lien prior to a contractor's. Lien Law (Consol.Laws, c. 33) § 2, defines a "contractor" as one who contracts with an owner of land to improve it, a "materialman" as one, other than a contractor, who furnishes material for such improvement, and an "improvement" as including work done on property or "materials furnished for its permanent improvement." *Held*, that the lien of one who installed plumbing, of one who furnished trim for the building under contract with the owner, and of one who sold brick and mason's building materials to the owner for use in the building, are all on equality, being entitled to preference in the order of time.—*Jackson v. Egan*, 94 N.E. 211, 200 N.Y. 496.—*Mech Liens* 196.

N.Y.A.D. 1 Dept. 1909. Lien Law (Laws 1897, p. 516, c. 418) § 2, defines a "subcontractor" as one who enters into a contract for the improvement of real property with a contractor, and defines a "materialman" as any person other than a contractor who furnishes material for the improvement. *Held*, that one agreeing with contractor to install a system of temperature regulation in a building, involving both the performance of labor and furnishing of materials, was a subcontractor within the statute.—*Herrmann & Grace v. City of New York*, 114 N.Y.S. 1107, 130 A.D. 531, affirmed 93 N.E. 376, 199 N.Y. 600.—*Mech Liens* 105.

N.Y.A.D. 1 Dept. 1909. A company which merely sold steam radiators to the contractors, but performed no work on the building, was a "materialman," and not a "subcontractor," within Lien Law (Laws 1897, p. 516, c. 418) § 2, defining those terms.—*Herrmann & Grace v. City of New York*, 114 N.Y.S. 1107, 130 A.D. 531, affirmed 93 N.E. 376, 199 N.Y. 600.—*Mech Liens* 108.

N.Y.A.D. 1 Dept. 1907. Under Laws 1897, p. 514, c. 418, § 3, giving a lien to a "contractor, subcontractor, laborer, or materialman, who performs labor or furnishes material for the improvement of real property," the terms "contractor," "subcontractor," "laborer," and "materialman," while they refer primarily to the man who has a formal contract with the owner, or a subcontractor, with the contractor, or who performed manual labor or furnished material, also embrace the man who buys the labor and material which enter into the improvement.—*Kerwin v. Post*, 104 N.Y.S. 1005, 120 A.D. 179.

N.Y.A.D. 2 Dept. 1915. One who furnishes to a contractor, but does not install, steel sashes called for by plans and specifications, and who performed no labor on the sashes after delivery, though submitting working drawings for approval, is a "materialman."—*Edward E. Buhler Co. v. New York Dock Co.*, 156 N.Y.S. 457, 170 A.D. 486.

N.Y.A.D. 4 Dept. 1982. Corporation under contract to furnish stone and gravel for public improvement projects was a "materialman" and not a "contractor" or "subcontractor" and thus company which supplied stone and gravel to such corporation

and persons who performed labor and services for the corporation had no rights as lienors. *McKinney's Lien Law* § 5.—*Gernatt Asphalt Products, Inc. v. Bensal Const. Inc.*, 456 N.Y.S.2d 590, 90 A.D.2d 993, affirmed as modified 470 N.Y.S.2d 362, 60 N.Y.2d 871, 458 N.E.2d 821.—*Pub Contr* 24.1.

N.Y.A.D. 4 Dept. 1923. Under Lien Law, § 3, a lien on real property arises when a contractor, subcontractor, laborer, or materialman performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner. Under section 2 a "contractor" is a person who enters into a contract with the owner of real property for the improvement thereof, a "laborer" is any person who performs any labor or services upon such improvement and a "materialman" is a person who furnishes material therefor.—*Russell v. Pitchler*, 198 N.Y.S. 702, 206 A.D. 651.—*Mech Liens* 81, 83, 86.

N.Y.Sup. 1968. Defendant who merely furnished materials to codefendant, prime contractor on public improvement project, was not a "subcontractor" but only a "materialman"; accordingly, assignor of plaintiff, who had processed materials under contract with defendant, could not under statute have filed valid mechanic's lien. Lien Law § 5.—*Kingston Trust Co. v. State*, 291 N.Y.S.2d 208, 57 Misc.2d 55.—*Mech Liens* 109.

N.Y.Sup. 1968. Under statute prohibiting action against maker of payment bond unless commenced within one year from date claimant performed last labor or furnished last of material for which action is brought or, if claimant is subcontractor of contractor, within one year from date final payment under subcontract became due, claimant which entered into contract for sale and delivery of material to subcontractor of contractor of public works project was not a "subcontractor" but rather a "materialman" and action commenced within one year of date final payment was due but more than one year after final delivery of material was barred. Lien Law, § 2 and subds. 10, 12; State Finance Law, §§ 137 and subd. 4(b).—*U. S. Steel Corp. (Certified Industries Division) v. Coral Concrete Corp.*, 286 N.Y.S.2d 743, 55 Misc.2d 946.—*Pub Contr* 61; *States* 101.

N.Y.Sup. 1949. A person who furnishes tires which are attached to vehicles owned and used by a sub-contractor in hauling material to and from a public improvement is not a "materialman" within Lien Law. Lien Law, § 2, subd. 12, § 21, subd. 7.—*Application of Johnson, Drake & Piper*, 94 N.Y.S.2d 737, 197 Misc. 595.—*High* 110.

N.Y.Sup. 1941. The seller of metal road forms, which were used in the construction of a concrete roadway and afterwards removed from the job for use in connection with other work, was not a "materialman" within the definition thereof contained in the Lien Law, so as to be entitled, without the necessity of filing notice of lien, to the protection of statute which declares that funds received by a contractor for a public improvement are trust funds to be applied first to the payment of claims of subcontractors, etc. Lien Law, §§ 2, 25-a.—*New*

York Trap Rock Corp. v. National Bank of Far Rockaway, 32 N.Y.S.2d 443, 177 Misc. 954, affirmed 39 N.Y.S.2d 991, 265 A.D. 994, appeal denied 41 N.Y.S.2d 198, 266 A.D. 655, motion denied 49 N.E.2d 1011, 290 N.Y. 745, affirmed 50 N.E.2d 1010, 291 N.Y. 598, appeal denied 58 N.E.2d 15, 293 N.Y. 776, reversed 59 N.E.2d 787, 293 N.Y. 884, motion denied 60 N.E.2d 843, 294 N.Y. 691.—High 113(4).

N.Y.Sup. 1934. Insurers held not entitled to lien on state money applicable to highway contract for unpaid workmen's compensation or public liability insurance premiums, as "laborers" or "materialmen," notwithstanding such premiums were included in statutory definition of "cost of improvement" and in statute directing application of funds received by public contractor. Definition of "cost of improvement" in Lien Law, § 2, as amended by Laws 1932, c. 627, § 1, does not extend the meaning of the words "laborer" and "materialman" within Lien Law, § 3, providing for a mechanic's lien for "laborer" or "materialman," since definition of "cost of improvement" refers to payments which may legitimately be made out of moneys received by owner through a building loan mortgage or building loan contract, and direction of Lien Law, §§ 25-a, 25-b, that funds received by public contractor should be applied first to payment of claims of architects, engineers, laborers, and materialmen, and the payment of "premiums on surety bond or bonds filed," and "premiums on insurance accruing during the making of the improvement," refers to moneys after they have been paid out as a fund to the party entitled thereto, such as the contractor or subcontractor.—In re John J. O'Rourke, Inc., 273 N.Y.S. 1020, 152 Misc. 575.

N.Y.Sup. 1924. Owner of milldam, who furnished material and labor to repair dam, held "materialman" and "laborer" under Lien Law, § 2, so as to entitle him to lien on property of millowner having right to water impounded.—Plattsburg Gas & Electric Co. v. Miller, 206 N.Y.S. 42, 123 Misc. 651, reversed 207 N.Y.S. 335, 211 A.D. 623.—Mech Liens 81, 83.

N.Y.Sup. 1908. A written order for oak flooring, placed with defendant by the general contractor, contained the words, "Charge contract 1,981-C-5," and another order to defendant recited that it covered the furnishing and delivery at the owner's switch of oak flooring for a contract known in the contractor's office as "1,981," which was the contract between the general contractor and the owner, Lien Law (Laws 1897, p. 515, c. 418) § 2, defines a "subcontractor" as one who enters into a contract with a contractor for the improvement of real property, and defines a "materialman" as any person other than a contractor who furnishes material for such improvement. Held, that defendant was a materialman, and not a subcontractor; the mere knowledge that the material was used by the contractor in the performance of a certain contract being insufficient to make him a subcontractor.—Hedden Const. Co. v. Proctor & Gamble Co., 114 N.Y.S. 1103, 62 Misc. 129, modified 118 N.Y.S. 920, 134 A.D. 244.—Mech Liens 108.

N.Y.Mag.Ct. 1932. Corporation contracting to perform portion of work for and furnish labor and material to principal contractor held "laborer" and "materialman" within act declaring funds received by subcontractor trust funds for payment of laborers and materialmen. Lien Law, § 2, and § 36-b, as added by Laws 1930, c. 859, § 18; General Construction Law, § 37.—People v. Levitt, 260 N.Y.S. 458, 145 Misc. 621.—Larc 15(1).

N.C. 1994. Real property improvement statute of repose is statute of repose governing claims of defective improvements to real property against "materialman," who is one furnishing or supplying materials used in building construction, renovation or repair. G.S. § 1-50(5).—Forsyth Memorial Hosp., Inc. v. Armstrong World Industries, Inc., 444 S.E.2d 423, 336 N.C. 438, appeal after remand 470 S.E.2d 826, 122 N.C.App. 413.—Lim of Act 30.

Ohio 1953. Whether materials furnished by dealer to contractor to be used in erection of building were selected from dealer's stock or made by dealer in his own establishment or procured from another for particular purpose, such dealer having nothing to do with installation of materials or fabrication thereof into structure, is a "materialman" within contemplation of mechanic's lien law and not a "subcontractor".—Rebisso, Inc. v. Frick, 112 N.E.2d 651, 159 Ohio St. 449, 50 O.O. 382.—Mech Liens 108.

Ohio 1953. Where manufacturer, on order of building subcontractor, furnished concrete septic tank for building under construction, and, because of size and weight of tank, delivered tank in three sections in excavation prepared by another and did nothing more than cement sections together, manufacturer was a "materialman" within contemplation of mechanic's lien law rather than a "subcontractor" and could properly be listed as materialman in affidavit for mechanic's lien by subcontractor. Gen.Code, § 8323-1.—Rebisso, Inc. v. Frick, 112 N.E.2d 651, 159 Ohio St. 449, 50 O.O. 382.—Mech Liens 135.

Ohio 1923. A contract entered into by a company with an owner, whereby for a stipulated consideration the former agreed to furnish and erect in the building of the latter flights of pressed steel stairs extending from the basement to the fourth floor of the building, did not constitute such company a "materialman" within Gen.Code § 8323-9.—Van Dorn Iron Works Co. v. Erie-Huron Realty Co., 140 N.E. 325, 21 Ohio Law Rep. 149, 21 Ohio Law Rep. 152, 108 Ohio St. 314, 1 Ohio Law Abs. 484.

Ohio App. 1 Dist. 1952. Whether materials furnished by dealer to contractor to be used in process of erection of building were selected from stock of dealer or made by him in his own establishment or procured from another for particular purpose, such dealer, having nothing to do relative to installation of materials or fabrication thereof into structure, is a "materialman" and not a "subcontractor".—Rebisso, Inc. v. Frick, 108 N.E.2d 282, 94 Ohio App. 45, 48 O.O. 359, affirmed in part, reversed in part

112 N.E.2d 651, 159 Ohio St. 449, 50 O.O. 382.—Mech Liens 108.

Ohio App. 1 Dist. 1952. Manufacturer, who made septic tank for plumbing contractor, and who trucked it to site where plumbing contractor had made excavation for tank, and who lowered the three sections of the tank into the excavation and cemented the sections together, was a "materialman" and not a "subcontractor" and therefore plumbing contractor's mechanic's lien was not invalid because affidavit listed manufacturer as a materialman.—*Rebisso, Inc. v. Frick*, 108 N.E.2d 282, 94 Ohio App. 45, 48 O.O. 359, affirmed in part, reversed in part 112 N.E.2d 651, 159 Ohio St. 449, 50 O.O. 382.—Mech Liens 135.

Ohio Com.Pl. 1951. Where plumbing contractor purchased septic tank from manufacturer who delivered tank in sections and had his employees erect it on premises, manufacturer was a "subcontractor" and not a "material man" within mechanic's lien law, and by listing him as a material man in affidavit for mechanic's lien on premises, plumbing contractor did not comply with the state statute and mechanic's lien was invalid. Gen.Code, §§ 8312, 8323-9.—*Rebisso, Inc. v. Frick*, 101 N.E.2d 15, 62 Ohio Law Abs. 340, reversed 108 N.E.2d 282, 94 Ohio App. 45, 48 O.O. 359, affirmed in part, reversed in part 112 N.E.2d 651, 159 Ohio St. 449, 50 O.O. 382.—Mech Liens 135.

Ohio Com.Pl. 1951. Manufacturer, from whom contractor purchased septic tank, who delivered it in sections and had employees erect it on premises, was a "subcontractor" and not "materialman," within mechanic's lien law.—*Rebisso, Inc. v. Frick*, 101 N.E.2d 15, 62 Ohio Law Abs. 340, reversed 108 N.E.2d 282, 94 Ohio App. 45, 48 O.O. 359, affirmed in part, reversed in part 112 N.E.2d 651, 159 Ohio St. 449, 50 O.O. 382.

Okl. 1937. A person who combines labor on premises in connection with furnishing of material is "contractor" and not "materialman," within mechanic's lien statute, and hence company furnishing material to him for performance of contract is entitled to statutory lien against property. 42 Okl. St. Ann. §§ 141, 143.—*Rogers v. Crane Co.*, 68 P.2d 520, 180 Okla. 139, 1937 OK 340.—Mech Liens 108.

Or. 1946. A person furnishing labor or material and labor on a contract direct with the owner is an "original contractor" within lien law, and a person furnishing merely material to be used in construction of building, whether furnished direct to the owner or to someone else, is a "materialman" and not an original contractor. ORS 87.005 to 87.075.—*Drake Lumber Co. v. Lindquist*, 170 P.2d 712, 179 Or. 402.—Mech Liens 83, 86.

Or. 1939. Stone mason who had in his possession some granite and stone which owner of buildings on which mason performed labor purchased during course of construction of the buildings, for use in the buildings, was as to such granite and stone a "materialman" within meaning of mechanics' lien law. ORS 87.010.—*Bennett v. Bruchou*, 96 P.2d 762, 163 Or. 175.—Mech Liens 83, 132(13).

Or. 1930. "Materialman" within statute is one who manufactures, purchases, or keeps for sale materials which enter into buildings. ORS 87.035.—*Heacock Sash & Door Co. v. Weatherford*, 294 P. 344, 135 Or. 153.—Mech Liens 83.

Or. 1930. Claimant furnishing materials directly to owner held "materialman," and not "original contractor," within statute, and was required only to file lien within 30 days from building's completion. ORS 87.035.—*Heacock Sash & Door Co. v. Weatherford*, 294 P. 344, 135 Or. 153.—Mech Liens 132(14).

R.I. 1989. Manufacturer of sprinkler system was within class of persons entitled to be protected by statute of repose on suits involving damages arising from deficiencies in materials furnished for improvements to real property, in its capacity as "manufacturer" and also as a "materialman". Gen.Laws 1956, § 9-1-29.—*Qualitex, Inc. v. Coventry Realty Corp.*, 557 A.2d 850.—Lim of Act 32(1).

Tex.App.—Houston [14 Dist.] 1989. Manufacturer, which made a portion of allegedly defective wall heater and which manufactured wall heater assembly, was not mere "materialman," and thus, materialman exclusion from ten-year statute of repose did not apply to manufacturer. V.T.C.A., Civil Practice & Remedies Code § 16.009.—*Dubin v. Carrier Corp.*, 798 S.W.2d 1, writ dismissed by agreement.—Lim of Act 30.

Tex.Civ.App.—Amarillo 1934. Words "materialman" and "subcontractor" are used in Mechanic's Lien Law as ordinarily understood (*Vernon's Ann. Civ.St. art. 10, subd. 1; arts. 5473 to 5479; Const. art. 16, § 37*).—*Huddleston v. Nislar*, 72 S.W.2d 959, writ refused.—Mech Liens 5.

Tex.Civ.App.—Eastland 1945. Company furnishing concrete blocks of standard kind and quality to contractor for use in performance of housing project contract was a "materialman" and not a "subcontractor" within lien statute. *Vernon's Ann.Civ. St. arts. 5160 et seq., 5473-5479*.—*Hillsdale Gravel Co. v. Dennehy Const. Co.*, 185 S.W.2d 583, writ refused w.o.m.—Mech Liens 108.

Tex.Civ.App.—Eastland 1945. Company furnishing sand and gravel to materialman which had contracted to furnish concrete blocks to contractor performing housing project contract was a "materialman" not entitled to protection of lien statute. *Vernon's Ann.Civ.St. arts. 5160 et seq., 5472a et seq.*—*Hillsdale Gravel Co. v. Dennehy Const. Co.*, 185 S.W.2d 583, writ refused w.o.m.—Mech Liens 109.

Utah 1972. Whether supplier is "materialman," within purview of statute providing for personal liability for owners of land to fail to obtain payment bond, turns on determination of whether the contractor purchased the material for resale and did, in fact, resell it, and incidental to that sale and delivery did install the same; or whether the contractor, under a contract for the construction, alteration or repair of the owner's structure, and incidental thereto, purchased the material from the supplier

to be incorporated in the improvement. U.C.A. 1953, 14-2-1, 14-2-2.—*Lawson Supply Co. v. General Plumbing & Heating, Inc.*, 493 P.2d 607, 27 Utah 2d 84.—*Mech Liens* 304(1).

Utah App. 1989. To be protected “materialman,” within meaning of statute stating that landowners who fail to obtain bond from contractor prior to commencement of contract are personally liable to persons who furnish materials or perform labor under contract, there must be contract between property owner and person with whom he contracts for construction, alteration, or repair of structure, and materials supplied at behest of contractor or subcontractor for use in project. U.C.A. 1953, 14-2-1, 14-2-2 (Repealed).—*Bailey v. Parker*, 778 P.2d 1005.—*Mech Liens* 229.

Utah App. 1989. Carpet buyer, not carpet seller, would be “materialman,” within meaning of statute stating that landowners who fail to obtain bond from contractor prior to commencement of contract are personally liable to persons who furnish materials or perform labor under contract, if buyer simply purchased carpet from seller for resale and sold it to homeowners. U.C.A. 1953, 14-2-1, 14-2-2 (Repealed).—*Bailey v. Parker*, 778 P.2d 1005.—*Mech Liens* 229.

Wash. 1913. Where a contractor engaged in reconstructing a canal entered into a contract with plaintiffs’ employer for the latter to furnish sand and gravel to be used in constructing the canal, plaintiffs’ employer was a “materialman,” and not a contractor, “subcontractor,” architect, builder, or a person in charge of the construction of the work, within Rem. & Bal.Code, § 1129, declaring that every contractor, subcontractor, architect, builder or person having charge shall be held to be the agent of the owner for the purposes of the establishment of a lien in favor of a person performing labor at the instance of the owner’s agent, and hence such laborers are not entitled to a lien, even though the sand and gravel prepared by them went into the construction of the canal.—*Baker v. Yakima Valley Canal Co.*, 137 P. 342, 77 Wash. 70.

Wash. 1911. One furnishing to a contractor sashes, doors, and glass for a building is not a subcontractor, but is a “materialman,” within Laws 1909, c. 45, requiring persons furnishing materials to a contractor to deliver to the owner a duplicate statement of such materials.—*Finlay v. Tagholm*, 113 P. 1083, 62 Wash. 341.—*Mech Liens* 99.

Wash.App. Div. 1 1987. “Subcontractor,” which, unlike “materialman,” may recover amounts due from prime contractor under public works bond and public works retainage funds, is one who takes from principal contractor a specific part of the work. West’s RCWA 39.08.030, 60.28.010.—*Farwest Steel Corp. v. Mainline Metal Works, Inc.*, 741 P.2d 58, 48 Wash.App. 719, review denied 109 Wash.2d 1009.—*Pub Contr* 25, 53.

Wash.App. Div. 1 1987. Steel subcontractor was “materialman” of prime contractor rather than “subcontractor,” and thus subcontractor’s unpaid suppliers could not recover amounts owing them from subcontractor from public works bond, where

subcontractor had less than 1% of total project amount, miscellaneous metal items it supplied were not complex or of great importance in relation to entire hospital expansion project, it performed no on-site work of any sort and there was no proof that it was closely intertwined with prime contractor. West’s RCWA 39.08.030, 60.28.010.—*Farwest Steel Corp. v. Mainline Metal Works, Inc.*, 741 P.2d 58, 48 Wash.App. 719, review denied 109 Wash.2d 1009.—*Pub Contr* 53.

W.Va. 1936. Ordinarily, a “materialman” is one from whom principal contractor or subcontractor secures material of general type for use on structure.—*Marsh v. Rothey*, 183 S.E. 914, 117 W.Va. 94.—*Mech Liens* 108.

Wyo. 1985. Building supply company which provided materials used to erect improvements on real property, but which did not actually perform work, was “materialman,” rather than “contractor” for purposes of statute [W.S.1977, §§ 29-1-202 to 29-2-109] establishing time period within which lien must be filed in order to be enforceable, therefore, building supply company’s failure to file lien within 90 days after last delivery precluded enforcement of lien.—*Weyerhaeuser Co. v. Walters*, 707 P.2d 733.—*Mech Liens* 132(10).

MATERIALMAN’S LIEN

Idaho 1940. Where there was sufficient competent evidence to sustain court’s finding that materials were furnished to be used in owners’ building, materialman was not required in order to enforce “materialman’s lien” against the building, to prove that the materials were used upon the building. Code 1932, § 44-501.—*Idaho Lumber & Hardware Co. v. DiGiacomo*, 102 P.2d 637, 61 Idaho 383.

Ind.App. 1942. A “materialman’s lien” is acquired only when the materials are furnished with an understanding that they are to be used for purpose named in mechanics’ lien statute and not when they are supplied under ordinary sale on credit or on open account, although the buyer may actually use them in the improvement.—*Ohio Oil Co. v. Fidelity & Deposit Co. of Maryland*, 42 N.E.2d 406, 112 Ind.App. 452.

MATERIAL MATTER

App.D.C. 1941. The erroneous description of new beneficiary as “common-law wife” in insured’s application for change of beneficiary did not relate to a “material matter” and did not avoid industrial life policy which insured himself had taken out, where there was no evidence that insured used the term with intent to deceive, since a beneficiary in a policy taken out by insured need not have an insurable interest. D.C.Code Supp. V, T. 5, § 217m.—*Carter v. Provident Ins. Co.*, 122 F.2d 960, 74 App.D.C. 348.—*Insurance* 3473.

C.A.11 (Fla.) 1998. Under Internal Revenue Code section proscribing willfully making and subscribing any return, statement, or other document, which contains or is verified by written declaration that it is made under penalties of perjury, and which person does not believe to be true and

correct as to every material matter, "material matter" is any information necessary to determination of taxpayer's income tax liability. 26 U.S.C.A. § 7206(1).—U.S. v. Neder, 136 F.3d 1459, rehearing and suggestion for rehearing denied 148 F.3d 1072, certiorari granted 119 S.Ct. 334, 525 U.S. 928, 142 L.Ed.2d 276, affirmed in part, reversed in part 119 S.Ct. 1827, 527 U.S. 1, 144 L.Ed.2d 35, on remand 197 F.3d 1122, certiorari denied 120 S.Ct. 2717, 530 U.S. 1261, 147 L.Ed.2d 982.—Int Rev 5263.20.

C.A.7 (Ill.) 1973. Source of one's income as stated in federal income tax return is "material matter" within meaning of statute proscribing willful making and subscribing of any income tax return which is verified by written declaration of its being made under the penalties of perjury and which declarant does not believe to be true and correct as to every material matter. 26 U.S.C.A. (I.R.C.1954) § 7206(1).—U.S. v. DiVarco, 484 F.2d 670, certiorari denied 94 S.Ct. 1412, 415 U.S. 916, 39 L.Ed.2d 470.—Int Rev 5263.30.

C.A.2 (N.Y.) 1972. Fact that defendant, on motion for leave to proceed in forma pauperis and for appointment of new counsel, was under no obligation to swear an affidavit before notary public that he was unemployed and not receiving any income did not mean that misstatements in affidavit were immaterial so as to preclude application of statute making a person guilty of perjury when he subscribes on oath to any "material matter" which he does not believe to be true. 18 U.S.C.A. § 1621.—U.S. v. Birrell, 470 F.2d 113.—Perj 11(3).

C.C.A.9 (Cal.) 1932. With reference to the materiality of perjured testimony, the term "material matter" refers, not only to the main fact which is the subject of inquiry, but also to any fact or circumstance which tends to corroborate or strengthen the proof adduced to establish the main fact.—Newman v. U.S., 58 F.2d 751.

C.C.A.5 (La.) 1940. Where witness testified in prosecution for operating illicit whisky distillery that witness was in defendant's smokehouse and recognized copper coil as a coil belonging to defendant's father, witness' false testimony on cross-examination that he was in smokehouse to purchase meat which he distributed to his tenants was a "material matter" and hence witness was guilty of perjury. Cr.Code § 125, 18 U.S.C.A. § 1621.—Blackmon v. U.S., 108 F.2d 572.—Perj 11(8).

C.C.A.5 (La.) 1940. Whether testimony is on a "material matter" within perjury statute depends on whether false testimony is capable of influencing the tribunal on the issue before it. Cr.Code § 125, 18 U.S.C.A. § 1621.—Blackmon v. U.S., 108 F.2d 572.—Perj 11(8).

C.C.A.3 (Pa.) 1940. Accused, who falsely gave his place of birth as New York instead of Ukraine, Russia, when registering as a voter in California, swore falsely to "material matter" and was guilty of "perjury" under California law even if accused would have been entitled to vote if he had told the truth, and habeas corpus would not lie to prevent extradition of accused to California on ground that

accused was guilty of no offense. West's Ann.Cal. Pen.Code, § 118; 18 U.S.C.A. §§ 3182, 3195; 28 U.S.C.A. §§ 41, 43, 1254, 2253; U.S.C.A.Const. art. 4, § 2, cl. 2.—U. S. ex rel. Darcy v. Superintendent of County Prisons of Philadelphia, 111 F.2d 409, certiorari denied 61 S.Ct. 19, 311 U.S. 662, 85 L.Ed. 425.—Hab Corp 526; Perj 11(2).

C.C.A.3 (Pa.) 1935. Phrase "material matter" as used in federal perjury statute means one that is legally capable of being proved in the cause and does not mean necessarily a matter that directly affects the ultimate issue of the trial. Cr.Code § 125, 18 U.S.C.A. § 1621.—U. S. v. Slutzky, 79 F.2d 504.—Perj 11(2).

C.C.A.6 (Tenn.) 1944. Where main issue in civil action to determine who is liable to pay federal government penalties for non-quota cotton was whether sales agreement was a contract for sale of cotton by present defendant and his associates as agents, or whether it was an outright sale, present defendant's testimony as to disposition of money received by him in the transaction was a "material matter" within the perjury statute, and authorized conviction of perjury upon proof that testimony was false. Cr.Code § 125, 18 U.S.C.A. § 231.—Fraser v. U.S., 145 F.2d 145, certiorari denied 65 S.Ct. 586, 324 U.S. 842, 89 L.Ed. 1403.—Perj 11(2).

C.C.A.4 (Va.) 1938. Where a drug addict, testifying on behalf of the government in prosecution for facilitating the transportation, concealment, and sale of morphine hydrochloride, stated that he, the defendant, and defendant's wife made a trip to Chicago to inquire about the price of morphine, defendant's allegedly false oath when subsequently testifying that defendant and his wife had never been in Chicago constituted a "material matter" on which prosecution for perjury could be based. 21 U.S.C.A. § 174.—Goins v. U. S., 99 F.2d 147, certiorari granted 59 S.Ct. 461, 306 U.S. 623, 83 L.Ed. 1028, certiorari dismissed 59 S.Ct. 783, 306 U.S. 622, 83 L.Ed. 1027.—Perj 11(2).

D.D.C 1956. Where subcommittee of Congressional Committee on Armed Services had all the information necessary, on which to base its report to Congress when it summoned witness, and purpose was to give him an opportunity to tell his side of the story or to have witness indicted for perjury if, under oath, he should adhere to his former statements, alleged false answers of witness did not relate to a "material matter" and witness could not be convicted of perjury.—U.S. v. Icardi, 140 F.Supp. 383.—Perj 11(2).

W.D.N.Y. 1994. Source of taxpayer's income is "material matter" for purposes of offense of filing fraudulent tax return. 26 U.S.C.A. § 7206(1).—U.S. v. Kaczowski, 882 F.Supp. 304.—Int Rev 5263.30.

Fla. 1946. Where husband testified in divorce suit against wife who was not personally served and did not appear, that she lived in certain place to which circuit court clerk had sent letter ordering her to appear in divorce suit, though husband knew she did not live there, husband's false statement was concerning a "material matter" and constituted

"perjury". F.S.A. § 63.28.—*Shelton v. State*, 26 So.2d 444, 157 Fla. 482.—Perj 11(2).

Fla.App. 2 Dist. 1987. Defendant's use of an alias at arraignment on misdemeanor charges was a "material matter" within meaning of perjury statute. West's F.S.A. § 837.02.—*State v. Marlow*, 501 So.2d 136.—Perj 11(2).

Ga.App. 1994. Personal injury defendant was not entitled to jury charge on impeachment, despite his claim that plaintiff was impeached during cross-examination by means of prior inconsistent statement; exchange regarding whether plaintiff first felt pain from his injuries on Saturday evening or Sunday evening following accident was not "material matter" requiring specific instruction on impeachment, and other jury charges adequately covered necessary principles. O.C.G.A. § 24-9-85(a).—*Sharp v. Fagan*, 449 S.E.2d 648, 215 Ga.App. 44.—Trial 210(3).

Idaho 1965. False statements made by defendant, who had entered a plea of guilty to rape, at hearing requested by him to present testimony for purpose of accomplishing mitigation of sentence was testimony with respect to a "material matter" within perjury statute. I.C. §§ 18-5401, 19-2515.—*State v. Martinez*, 404 P.2d 573, 89 Idaho 232.—Perj 11(2).

N.Y.Gen.Sess. 1917. In Penal Law, § 1620, denouncing as perjury false testimony of a witness as to any "material matter," the word "material" includes testimony elicited concerning a collateral matter, providing such testimony is material, as tending either to prove or to disprove a fact bearing on any matter at issue.—*People v. Brill*, 165 N.Y.S. 65, 100 Misc. 92, 35 N.Y.Crim.R. 515.—Perj 11(8).

S.D. 1943. Alleged false testimony of defendant, charged with issuing a worthless check, that he was married and identifying a certain woman in courtroom as his wife, did not relate to a "material matter" which is an essential element of crime of perjury. SDC 13.1237.—*State ex rel. Engebritson v. Circuit Court for Grant and Day Counties*, 11 N.W.2d 659, 69 S.D. 454, 150 A.L.R. 739.—Perj 11(9).

Utah 1967. False testimony of defendant in habeas corpus proceeding instituted by fellow prisoner that fellow prisoner's accuser had falsely accused fellow prisoner of robbery was on a "material matter" for first-degree perjury purposes.—*State v. Dodge*, 425 P.2d 781, 19 Utah 2d 44.—Perj 11(2).

MATERIAL MATTERS

Ga.App. 1908. Only contradictory statements as to "material matters" can be used for the purpose of impeachment, and by "material matters" are meant matters competent to prove one side or the other of the issue, and admissible for that purpose.—*Luke v. Cannon*, 62 S.E. 110, 4 Ga.App. 538.

Mont. 1918. Representations to plaintiff, stockholder in a company, that shares of its stock had been turned back to it by a subscriber unable to pay therefor, with solicitation of plaintiff to buy it "to

help out the company," relate to "material matters," within Rev.Codes, § 4978, defining fraud.—*Stillwell v. Rankin*, 174 P. 186, 55 Mont. 130.—Corp 116.

Wash. 1970. Where company's proxy solicitation informed shareholders that purpose of meeting was election of directors, named all nominees, stated candidates' union affiliations and stockholdings, designated nominees for whom company would cast solicited proxy votes, explained cumulative voting and stated methods by which proxy could be revoked, information furnished constituted all of the "material matters" contemplated by statute requiring proxy solicitation to include information reasonably adequate as to material matters in regard to which powers are proposed to be used; company was not required to detail strategy to be used in casting cumulative vote. RCWA 48.08.090(3) (a).—*Washington State Labor Council v. Federated Am. Ins. Co.*, 474 P.2d 98, 78 Wash.2d 263, 41 A.L.R.3d 222.—Corp 198(3).

MATERIAL MEN

C.C.A.3 (N.J.) 1943. Where Miller Act expressly protected every person furnishing labor or materials for public buildings or work, the so-called "proviso" that any person having direct contractual relationship with "subcontractor" but none with contractor, should have right of action on payment bond upon giving written notice, was not a limiting proviso nor an "exception" but was an extension of the ambit of the act and "subcontractor" should be broadly construed to include "materialmen". 40 U.S.C.A. § 270b.—U.S., for Use and Benefit of Calvin Tomkins Co. v. Clifford F. MacEvoy Co., 137 F.2d 565, certiorari granted 64 S.Ct. 267, 320 U.S. 733, 88 L.Ed. 433, reversed 64 S.Ct. 890, 322 U.S. 102, 88 L.Ed. 1163.—Princ & S 63; U S 67(6).

Mass. 1989. Authority of Commissioner of Labor and Industries to set wage rates for certain jobs performed in construction of public works clearly encompassed power to set wages for teamsters who hauled bituminous concrete to public works projects and aided in its installation; teamsters were not merely "materialmen" to whom public works wage statute did not apply. M.G.L.A. c. 149, §§ 26, 27.—*Construction Industries of Massachusetts v. Commissioner of Labor and Industries*, 546 N.E.2d 367, 406 Mass. 162, 29 Wage & Hour Cas. (BNA) 1056.—Labor 1448.

Miss. 1960. Where road contractor's agreement with gravel company, under which contractor purchased washed gravel delivered at pit, placed gravel company under no obligation to do anything towards construction of road and gravel company had no responsibility to see that contract between road contractor and State Highway Commission for construction of the road was fulfilled, gravel company and those supplying it with gasoline and diesel fuel to be used in mining the gravel and with stabilizer were "materialmen" and not "subcontractors", and the road contractor and its surety had no liability, under the public contract statutes, for the gasoline, diesel fuel and stabilizer furnished to the gravel company. Code 1942, § 9016.—*Webb v. Blue*

Lightning Service Co., 116 So.2d 753, 237 Miss. 862.—High 113(5).

N.Y.A.D. 1 Dept. 1920. Words “material men,” used in a trade-name, mean persons who furnish material used in the construction or repair of a building or vessel, being similar in such respect to “hardware men,” “dry goods men,” “bankers,” or any other word that designates men of a particular trade or business.—*Material Men’s Mercantile Ass’n v. Material Men’s Credit Agency*, 180 N.Y.S. 801, 191 A.D. 73.—Trade Reg 16.

MATERIALMEN’S LIEN

Ala. 1943. A “materialmen’s lien” is of particular statutory creation and is circumscribed by terms of its creation.—*Emanuel v. Underwood Coal & Supply Co.*, 14 So.2d 151, 244 Ala. 436.

MATERIAL MISCONDUCT

Tex.Civ.App.—Austin 1938. Where 21 special issues were submitted to jury and jury contrary to court’s instruction considered first the issue of damage which testimony indicated was arrived at by an agreement among jurors to be bound by quotient vote, after which issues respecting defendant’s negligence were considered and jury then found against plaintiff on issue of contributory negligence under circumstances indicating that at least nine jurors who disagreed with such answers assented only for the purpose of preventing a hung jury, jury’s action constituted “material misconduct,” requiring a reversal.—*Allcorn v. Fort Worth & R. G. Ry. Co.*, 122 S.W.2d 341, writ refused.—App & E 1069.1.

MATERIAL MISCONDUCT OF THE JURY

Tex.Civ.App.—Eastland 1938. In action against bus line for injuries sustained by passenger, it was “material misconduct of the jury,” requiring new trial, where during deliberation and discussion of amount of damages one juror stated that bus lines of type operated by defendants usually carried insurance and some discussion apparently took place as to amount an insurance company had paid another juror for injuries.—*Murphey v. Blankenship*, 120 S.W.2d 309.—New Tr 44(2).

MATERIAL MISREPRESENTATION

C.A.6 1978. Where letter which union distributed to employees over weekend prior to collective bargaining election claimed that union had obtained a 70¢ per hour wage increase for employees of another employer located in the same general labor market whereas the actual wage increase obtained was 50¢ per hour, letter overstated the size of the increase by 40% and was such a “material misrepresentation” with respect to a matter of great concern to employees as to warrant denial of National Labor Relations Board’s petition for enforcement of bargaining order. National Labor Relations Act, § 8(a)(1, 5) as amended 29 U.S.C.A. § 158(a)(1, 5).—*Diamond Electronics Div. of Arvin Systems, Inc. v. N.L.R.B.*, 570 F.2d 156.—Labor 703.1.

C.A.11 1991. Immigrant’s statement that he had been office clerk and his concealment of status as Mayor of Kaunas, Lithuania, from June 25, 1941 to May, 1942, during Nazi German occupation constituted “material misrepresentation” supporting denaturalization; revelation of actual position would have led to further investigation by various agencies. Immigration and Nationality Act, § 339(a), as amended, 8 U.S.C.A. § 1451(a).—*Palciauskas v. U.S. I.N.S.*, 939 F.2d 963.—Aliens 71(7).

C.A.Fed. 1997. Federal Highway Administration (FHWA) made “material misrepresentation” with regard to road construction contract, in that clay content in quarry to be used to produce aggregates for pavement structure was significantly higher than that represented.—*T. Brown Constructors, Inc. v. Pena*, 132 F.3d 724, rehearing denied.—High 113(4).

C.A.2 (Conn.) 1995. For purposes of determining whether insurer could rescind homeowners’ insurance policy under Connecticut law, applicant’s failure to reveal prior loss of home by fire on application was “material misrepresentation” with regard to insurer’s decision whether to insure applicant and what premium to charge where applicant specifically requested information, and insurer’s guidelines stated that applicant that had suffered loss within previous three years should be denied coverage.—*Pinette v. Assurance Co. of America*, 52 F.3d 407.—Insurance 3021.

C.A.11 (Fla.) 2000. Under *uberrimae fidei*, material misrepresentation on application for marine insurance is grounds for voiding the policy; misrepresentation is “material misrepresentation” if it might have bearing on risk to be assumed by insurer.—*HIH Marine Services, Inc. v. Fraser*, 211 F.3d 1359.—Insurance 2996.

C.A.11 (Ga.) 1992. “Material misrepresentation” in procuring insurance coverage, sufficient to bar recovery under Georgia law, is one that would influence prudent insurer in deciding whether to assume risk of providing coverage. O.C.G.A. § 33–24–7(b)(3).—*Nappier v. Allstate Ins. Co.*, 961 F.2d 168.—Insurance 2958.

C.A.5 (Ga.) 1978. Under Georgia law, it was a “material misrepresentation” for life insurance applicant to answer “no” to question whether he had consulted or been treated by a physician or practitioner in the past five years where the applicant had in fact consulted and been treated by a psychiatrist numerous times within three years. Code Ga. § 56–2409.—*Taylor v. Time Ins. Co.*, 583 F.2d 743.—Insurance 3003(11).

C.A.7 (Ill.) 1984. Misrepresentation on closing statement that \$32,908.55 had been paid to sellers’ to satisfy outstanding mortgage on property, when in fact only \$1,426.77 had been so paid, was “material misrepresentation” within meaning of statute prohibiting making false statements to government agencies. 18 U.S.C.A. § 1001.—*U.S. v. Bailey*, 734 F.2d 296, certiorari denied 105 S.Ct. 327, 469 U.S. 931, 83 L.Ed.2d 263.—Fraud 68.10(4).

C.A.6 (Mich.) 1997. Under Michigan law, as predicted by federal appellate court, misrepresentation of insured's medical condition was "material misrepresentation" voiding life insurance policy under statute defining material misrepresentation as one misrepresenting facts that would have caused insurer to refuse to contract, in that insurer would have doubled premium charged if it had been given correct medical history, and thus would have refused to make contract as made. M.C.L.A. § 500.2218(1).—United of Omaha Life Ins. Co. v. Rex Roto Corp., 126 F.3d 785, 1997 Fed.App. 282P.—Insurance 3003(4).

C.A.5 (Miss.) 1999. Under Mississippi law, misrepresentation in insurance application is "material misrepresentation" if knowledge of true facts would have influenced prudent insurer in determining whether to accept risk.—Carroll v. Metropolitan Ins. and Annuity Co., 166 F.3d 802.—Insurance 2958.

C.A.3 (N.J.) 2001. Deliberate suppression of a material fact that should be disclosed is equivalent to a "material misrepresentation," as an element of fraud under New Jersey law.—Gleason v. Norwest Mortgage, Inc., 243 F.3d 130.—Fraud 16.

C.A.3 (N.J.) 1969. Misrepresentation by prospective insured, who answered negatively to question of whether he had ever been treated for, inter alia, heart disease, was clearly a "material misrepresentation" under New Jersey law.—Parker Precision Products Co. v. Metropolitan Life Ins. Co., 407 F.2d 1070.—Insurance 3003(11).

C.C.A.7 (Ind.) 1940. Under Indiana law, a misrepresentation by an insured in making an application for insurance may be a "material misrepresentation," so as to avoid the policy though insured's injuries may result from causes not connected with misrepresented facts.—Prentiss v. Mutual Ben. Health & Acc. Ass'n, 109 F.2d 1, certiorari denied 60 S.Ct. 1079, 310 U.S. 636, 84 L.Ed. 1405.—Insurance 2958.

C.C.A.7 (Ind.) 1940. Alleged misrepresentation by insured that insured had no syphilis and had received no medical attention in the last 5 years in application for policy of health and accident insurance, was a "material misrepresentation" so as to preclude recovery under Indiana law for insured's accidental death as result of automobile collision, unless insurer failed to rescind the policy promptly after discovering alleged misrepresentation.—Prentiss v. Mutual Ben. Health & Acc. Ass'n, 109 F.2d 1, certiorari denied 60 S.Ct. 1079, 310 U.S. 636, 84 L.Ed. 1405.—Insurance 3003(11), 3004.

C.C.A.7 (Wis.) 1941. The failure of insured, obtaining reinstatement of war risk policy, to disclose fact that he was suffering from myocarditis constituted a "material misrepresentation," the effect of which was to avoid the war risk policy.—Pence v. U.S., 121 F.2d 804, certiorari granted 62 S.Ct. 185, 314 U.S. 602, 86 L.Ed. 484, affirmed 62 S.Ct. 1080, 316 U.S. 332, 86 L.Ed. 1510, rehearing denied 62 S.Ct. 1287, 316 U.S. 712, 86 L.Ed. 1777.—Armed S 69(3); Insurance 3003(11).

E.D.Ark. 1989. Misrepresentation in offering memorandum for limited partnership that vice-president of general partner of limited partnership had college degree when in fact he was roughly two credits short of degree was not "material misrepresentation" for securities fraud purposes. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—New Equity Sec. Holders Committee for Golden Gulf, Ltd. v. Phillips, 97 B.R. 492.—Sec Reg 60.27(1).

N.D.Cal. 1941. Where insured's broker represented that leasehold to be insured by valued fire policy was for term running until destruction of property, whereas it was actually a month-to-month tenancy, and policy would not have been issued had insurer known true facts, misrepresentation was a "material misrepresentation" which entitled insurer to rescind the policy. West's Ann. Insurance Code, § 2070.—Smith v. Royal Ins. Co., 37 F.Supp. 841, reversed 125 F.2d 222, certiorari denied 62 S.Ct. 1291, 316 U.S. 695, 86 L.Ed. 1765.—Insurance 2992(1).

D.Conn. 1992. Insured's signed statement and statement during examination under oath that he lived almost exclusively at the insured property prior to fire was "material misrepresentation" voiding policy under Connecticut law; insured admitted on cross-examination that he had in fact lived with sister and that he made misrepresentation out of belief that he would be facilitating his claim, and residency by insured was condition to policy that provided replacement value.—Allstate Ins. Co. v. Priga, 810 F.Supp. 373.—Insurance 3183.

S.D.Ga. 1982. A "material misrepresentation" such as would preclude recovery on insurance policy under Georgia statute is one that would influence either a prudent insurer's decision of whether to accept the risk or insurer's determination of amount of premium to be charged. Ga.Code, § 56-2409.—Cummings v. Prudential Ins. Co. of America, 542 F.Supp. 838.—Insurance 2958.

N.D.Ill. 2001. Insured's failure to disclose that he already had other disability coverage when he applied for disability insurance policy was "material misrepresentation," for purposes of new insurer's claim for rescission of policy under Illinois law, in that insurer would have reached alternative assessment of risk of underwriting insured's policy had it then known of his other coverage. S.H.A. 215 ILCS 5/154.—Royal Maccabees Life Ins. Co. v. Malachinski, 161 F.Supp.2d 847.—Insurance 3023.

N.D.Ill. 2001. Insured's failure to disclose material information or provide complete information in response to a question can constitute a "material misrepresentation" under provision of Illinois insurance code limiting insurer's ability to rescind policy based on material misrepresentation. S.H.A. 215 ILCS 5/154.—Royal Maccabees Life Ins. Co. v. Malachinski, 161 F.Supp.2d 847.—Insurance 1968, 2964.

N.D.Ill. 1992. Incomplete answers or failure to disclose material information in response to insurance application may constitute a "material misrepresentation" entitling insurer to rescission under

Illinois law.—Bageanis v. American Bankers Life Assur. Co. of Florida, 783 F.Supp. 1141.—Insurance 2964.

D.Minn. 1997. Misrepresentation is “material misrepresentation,” within meaning of § 10b-5, if it is substantially likely that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered “total mix” of information made available. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—Brogren v. Pohlad, 960 F.Supp. 1401.—Sec Reg 60.28(11).

S.D.Miss. 1991. Insured’s failure to disclose his history of mitral valve prolapse and heart murmur, chronic lymphadenopathy, rectal warts, and HIV positivity in response to specific questions on application for health insurance each rose to level of “material misrepresentation,” and provided independent basis for rescission of policy under Mississippi law.—Golden Rule Ins. Co. v. Hopkins, 788 F.Supp. 295.—Insurance 3003(11).

E.D.Mo. 1985. Misstatement concerning marginability of bonds was “material misrepresentation” within meaning of provision of Securities Act [15 U.S.C.A. § 77l(2)] governing civil liabilities arising in connection with prospectus and communications, where bonds in question were purchased specifically for leveraged bond account according to strict set of criteria that was communicated to brokerage firm, and marginability was essential attribute of bonds to be purchased for that account. Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l(2).—Monetary Management Group of St. Louis, Inc. v. Kidder, Peabody & Co., Inc., 615 F.Supp. 1217.—Sec Reg 25.57.

E.D.Mo. 1942. In action on limited disability policy to recover benefits payable for loss of eyesight, where insured had stated in application that he had not consulted or been treated by a physician for any ailment not included in previous question relating to eye trouble, which was answered in the negative and insured had been examined for eye trouble and the disease diagnosed as retinitis pigmentosa, and insured contended that the negative answer referred only to minor difficulties such as nearsightedness but also contended that he had in fact answered yes to that question, the representation that insured had not consulted a physician for any disease or difficulty with eyesight was a “material misrepresentation” barring recovery under Missouri statute. Mo.R.S.A. § 5843.—Ettman v. Federal Life Ins. Co., 48 F.Supp. 578, affirmed 137 F.2d 121, certiorari denied 64 S.Ct. 193, 320 U.S. 785, 88 L.Ed. 472, rehearing denied 64 S.Ct. 265, 320 U.S. 815, 88 L.Ed. 492.—Insurance 3003(10).

D.N.J. 2001. Under New Jersey law, employer’s statement to prospective employee that he would be sales manager of New Jersey area was not a “material misrepresentation,” as required to establish a fraud claim, though employer hired another manager for New Jersey; employee was still made sales manager, and his job description was not affected by presence of other sales manager.—

Swider v. Ha-Lo Industries, Inc., 134 F.Supp.2d 607.—Fraud 20.

D.N.J. 2000. “Material misrepresentation,” of kind that will enable insurer to rescind policy, includes failure to inform insurer of change of conditions, between time of insured’s application and policy’s effective date, that are material to risk.—In re Jasmine, Ltd., 258 B.R. 119.—Insurance 2955, 2958.

S.D.N.Y. 1997. Requirement in Lanham Act false advertising case is that false or misleading statement constitute “material misrepresentation,” in other words, one that could have impact on consumer’s decision whether to purchase product. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).—Telebrands Corp. v. Wilton Industries, Inc., 983 F.Supp. 471.—Trade Reg 870(1).

W.D.N.Y. 1942. Where application for life insurance provided that if premium was not paid with application, policy would take effect on date of its issue, and then only if applicant had not consulted physician since medical examination, insured’s failure to disclose in amended application, which he signed on delivery of policy, that he had had operation for stomach ulcers since medical examination, was a “material misrepresentation”, making policy voidable at insurer’s option.—Brady v. John Hancock Mutual Insurance Co of Boston, Mass, 53 F.Supp. 173, affirmed 139 F.2d 697.—Insurance 3003(11).

E.D.Pa. 1963. Alien’s misrepresentation is a “material misrepresentation” if alien is excludable on true facts or misrepresentation tends to shut off line of inquiry which is relevant to alien’s eligibility and which might result in proper determination that he be excluded. Immigration and Nationality Act, §§ 212(a) (19), 340(a), 8 U.S.C.A. §§ 1182(a) (19), 1451(a).—In re Ferenci, 217 F.Supp. 714.—Aliens 62(1).

W.D.Pa. 1965. Alien’s false representation that she was unmarried at time of applying for citizenship was not “material misrepresentation” and did not preclude her from establishing good moral character for naturalization purposes. Immigration and Nationality Act, § 101(f) (6), 8 U.S.C.A. § 1101(f) (6).—In re Haniatakis, 246 F.Supp. 545, reversed 376 F.2d 728.—Aliens 62(5).

Bkrty.S.D.N.Y. 1992. For purpose of dischargeability exception based on false financial statement, Chapter 7 debtors’ false representation in three documents that they owned their home constituted “material misrepresentation”; creditor would not have participated in financing on recourse basis had debtors made truthful disclosure. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Boice, 149 B.R. 40.—Bankr 3353(12.15).

Bkrty.E.D.Pa. 1994. Chapter 11 debtor’s failure to inform lender, at meeting to determine whether lender would extend line of credit to debtor’s business, that she had recently laid herself off from business in attempt to conserve funds was “material misrepresentation,” of kind which might preclude discharge of debtor’s obligation to lender,

as undisclosed fact inconsistent with debtor's attempt to assure bank that all was well with business. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—*In re Chryst*, 177 B.R. 486.—Bankr 3353(4).

Bkrtcy.W.D.Tenn. 1999. Debtor's concealment of material fact satisfies the "material misrepresentation" requirement of "false pretenses" dischargeability exception. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—*In re Waters*, 239 B.R. 893.—Bankr 3353(1.40).

Ariz.App. Div. 1 1982. Legislature intended bad checks to be included in definition of "material misrepresentation" under statute proscribing theft. A.R.S. § 13-1802, subd. A, par. 3.—*State v. Williams*, 656 P.2d 1272, 134 Ariz. 411.—False Pret 6.

Cal.App. 2 Dist. 1943. Vendor's representation that area of lots was 110 feet by 300 feet, whereas area was only 102.79 feet by 110 feet, so that actual area was 2,163 feet less than represented, constituted a "material misrepresentation" entitling purchasers to rescind.—*Younis v. Hart*, 138 P.2d 323, 59 Cal.App.2d 99.—Ven & Pur 37(2).

Cal.App. 2 Dist. 1943. Vendor's representation that easterly line of lot was 7 feet east of easterly wall of building formerly used as dance hall, whereas, in fact, it was flush with east wall thereof, was a "material misrepresentation" justifying rescission by purchasers.—*Younis v. Hart*, 138 P.2d 323, 59 Cal. App.2d 99.—Ven & Pur 37(2).

Conn. 1991. Insured's dash mark in response to automobile insurance application question directing him to list all children in his household was not "material misrepresentation" which defeated recovery on automobile policy for death of adult son who was struck by automobile; because definition of "child" most commonly means person under age of majority, insured could reasonably have understood question as inquiring if any underage person lived in his household and child for whom he sought benefits was a 38-year-old adult at time insured filled out application.—*Middlesex Mut. Assur. Co. v. Walsh*, 590 A.2d 957, 218 Conn. 681.—Insurance 3006.

Del.Ch. 1943. Insured's failure to disclose in response to question in application for reinstatement of lapsed life policy that during preceding five years he had been examined by two physicians besides the one disclosed in answer was not such a "material misrepresentation" as would justify rescission of reinstatement contract, where such examinations disclosed no ailment or disease.—*Harris v. New York Life Ins. Co.*, 33 A.2d 154, 27 Del.Ch. 170.—Insurance 2052.

Del.Ch. 1941. A statement by applicant for life insurance policy or reinstatement thereof that he has had no disease or illness is not "material misrepresentation" warranting rescission of policy or reinstatement, unless he has knowingly had some disorder which so far affects his physical condition that it may reasonably be held to form material factor in estimating possible duration of his life, as distinguished from mere temporary ailments or af-

fections, which are not so serious or dangerous as to have bearing on his general health and continuance of life, and ordinarily pass away leaving no trace in applicant's constitution or permanent injury to his system.—*Equitable Life Assur. Soc. of U.S. v. Wilson*, 18 A.2d 240, 25 Del.Ch. 296.—Insurance 2052, 3003(9).

Fla. 1944. Where vendor, knowing that purchaser sought a sound and permanent investment, represented that 99-year lease on property, subject to which property was sold, would produce a specified annual income for 99 years, and failed to disclose that lease contained option to purchase demised premises at a time 10 to 12 years after date thereof, purchaser could rescind for "material misrepresentation," even though lease was recorded.—*Morris v. Ingraffia*, 18 So.2d 1, 154 Fla. 432.—Ven & Pur 37(7).

Ga. 1943. Insured's failure to disclose in response to questions in application for life policy which was attached to policy that he had received treatment for a pre-cancerous condition called "Keratosiis" constituted as matter of law a "material misrepresentation" and precluded recovery on policy, though insured answered questions in good faith and Keratosiis bore no relation to the cancer from which insured died. Code, §§ 56-904, 56-908.—*Preston v. National Life & Acc. Ins. Co.*, 26 S.E.2d 439, 196 Ga. 217, 148 A.L.R. 897.—Insurance 3003(11).

Ga. 1943. Though the misrepresented fact or condition need not actually or probably contribute toward producing death of insured or other event maturing policy earlier than would have been the case had representation been true, in order to defeat recovery on a life policy on the ground of "material misrepresentation", it must be shown that the risk was thereby substantially enhanced in the particular case. Code, §§ 20-1101, 56-908, 102-102, subd. 6.—*Preston v. National Life & Acc. Ins. Co.*, 26 S.E.2d 439, 196 Ga. 217, 148 A.L.R. 897.—Insurance 3003(4).

Ga. 1940. A misrepresentation by vendor of land that it is free of liens is a "material misrepresentation", and if purchaser is thereby induced to enter upon contract of purchase and sale, he may, upon discovering the fraud, rescind the contract and recover the portion of purchase price paid, and it is immaterial that lien has not in fact been enforced or that vendor could pay the lien, or that purchaser could satisfy it and deduct amount paid from agreed purchase price. Code 1933, §§ 20-906, 37-703.—*Crowell v. Brim*, 12 S.E.2d 585, 191 Ga. 288.—Ven & Pur 334(2).

Ga.App. 1999. Failure to mention in search warrant affidavit that informant had pending charges against him and that he was paid was not "material misrepresentation" that would require suppression in prosecution for selling cocaine; affiant officer informed magistrate that informant was admitted drug addict and had bought drugs in past, and even if omitted material been included, affidavit would have been sufficient to support magistrate's conclusion that informant was reliable and

that probable cause existed for search. U.S.C.A. Const.Amend. 4.—*Starks v. State*, 523 S.E.2d 397, 240 Ga.App. 346, certiorari denied.—*Controlled Subs* 147.

Ga.App. 1999. A “material misrepresentation” in insurance application, which may void policy, is one that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing a different amount of premium in the event of such acceptance. O.C.G.A. § 33-24-7(b).—*Thompson v. Permanent General Assur. Corp.*, 519 S.E.2d 249, 238 Ga.App. 450.—*Insurance* 2958.

Ga.App. 1996. For purposes of determining if recovery under insurance policy is precluded by insured’s material misrepresentation, “material misrepresentation” is one which would influence prudent insurer in determining whether to accept the risk, or in fixing amount of premium in event of such acceptance.—*Brown v. JMIC Life Ins. Co.*, 474 S.E.2d 645, 222 Ga.App. 670, certiorari denied.—*Insurance* 2958.

Ga.App. 1980. “Material misrepresentation” is one that would influence prudent insurer in determining whether or not to accept risk, or in fixing different amounts of premiums in event of such acceptance.—*Sentry Indem. Co. v. Brady*, 264 S.E.2d 702, 153 Ga.App. 168.—*Insurance* 2958.

Ga.App. 1942. Reply by insured in application for policy to question concerning the names and addresses of physicians consulted, that he had only seen a certain doctor for influenza, though he had been treated by another doctor for a pre-cancerous sore or irritation on his lip, called “Keratosi” was a “material misrepresentation” inducing issuance of policy, and no recovery on the policy could be had.—*National Life & Acc. Ins. Co. v. Preston*, 23 S.E.2d 526, 68 Ga.App. 614, affirmed 26 S.E.2d 439, 196 Ga. 217, 148 A.L.R. 897.—*Insurance* 3003(11).

Ga.App. 1941. Insured’s false negative answer in application for reinstatement of lapsed life policy to question whether he had been attended by a physician was a “material misrepresentation” which voided reinstatement of policy, where there was no showing that insurer knew that answer was untrue or that it was not voluntarily and willfully made to induce reinstatement.—*Smith v. National Life & Acc. Ins. Co.*, 16 S.E.2d 763, 66 Ga.App. 1.—*Insurance* 2052.

Ga.App. 1940. Evidence that insured several years prior to making application for accident policy had strained his back but was discharged from veterans’ hospital where his back was X-rayed, without receiving treatment, and was denied compensation for the alleged injury, authorized in accident policy application that he had not been disabled or received medical attention during the last 10 years was not such a “material misrepresentation” as would avoid the policy.—*National Acc. & Health Ins. Co. v. Childs*, 9 S.E.2d 108, 62 Ga.App. 633.—*Insurance* 3015.

Ga.App. 1939. A variation from the truth in application for life, accident and health policy to

amount to “material misrepresentation” avoiding policy must be such as to change the nature of the risk.—*Mutual Benefit Health & Acc. Ass’n v. Marsh*, 4 S.E.2d 84, 60 Ga.App. 431.—*Insurance* 3001, 3004.

Ga.App. 1939. Where insured stated in his application for life, accident, and health policy that a life or disability policy had never been canceled on him, and at trial insured admitted that a disability policy had been canceled out on him, but testified that it was custom of company issuing such policy to cancel policies after a man got down and out, failure to answer question in application truthfully, constituted a “material misrepresentation” which warranted avoiding policy. Code 1933, §§ 56-820, 56-821, 56-908.—*Mutual Benefit Health & Acc. Ass’n v. Marsh*, 4 S.E.2d 84, 60 Ga.App. 431.—*Insurance* 3024.

Ga.App. 1939. In action on life, accident and health policy for loss of leg, evidence that insured failed to disclose in his application for policy that he had application for another similar policy pending, that a disability policy of insured had been canceled, that insured had made several sickness and accident claims under disability policy, totalling approximately \$2,200 over a period of 13 years, and that insured had malaria, gripe, and bronchitis, was sufficient to show “material misrepresentation” entitling insurer to avoid policy. Code 1933, §§ 56-820, 56-821, 56-908.—*Mutual Benefit Health & Acc. Ass’n v. Marsh*, 4 S.E.2d 84, 60 Ga.App. 431.—*Insurance* 3025.

Ga.App. 1935. Misrepresentation of actual cost price of automobile held not “material misrepresentation” avoiding fire policy which was not “valued,” but provided for compensation on basis of actual value of automobile at time of loss (Code 1933, § 56-821).—*Firemen’s Ins. Co. v. Parmer*, 181 S.E. 880, 51 Ga.App. 916.—*Insurance* 3006.

Ky. 1960. False answer in application for insurance is a “material misrepresentation” which will prevent recovery on policy, if insurer, acting reasonably and naturally in accordance with usual practice of insurance companies under similar circumstances, would not have accepted application if the substantial truth had been stated therein. KRS 304.656.—*Mills v. Reserve Life Ins. Co.*, 335 S.W.2d 955.—*Insurance* 2958.

La.App. 1 Cir. 1995. “Material misrepresentation” by insurance applicant, which voids policy when made with intent to deceive, is one which, had it not been made, insurer would not have issued policy; if insurer would have issued policy anyway, misrepresentation is not material. LSA-R.S. 22:619, 32:900.—*Breaux v. Bene*, 664 So.2d 1377, 1995-1004 (La.App. 1 Cir. 12/15/95).—*Insurance* 2958.

Mich. 1942. If illness for which insured had consulted a doctor was not serious, failure to disclose such attendance is not such a “material misrepresentation” as to void fraternal life policy.—*Polish Roman Catholic Union of America v. Palen*, 5 N.W.2d 463, 302 Mich. 557.—*Insurance* 3003(10).

Mo. 1927. Failure to state that insured had been informed by consulted physician that she had exophthalmic goiter held "material misrepresentation". Rev.St.1919, § 6192, Mo.R.S.A. § 5893. Per Atwood, J.—*Emery v. New York Life Ins. Co.*, 295 S.W. 571, 316 Mo. 1292.—Insurance 3003(11).

Mo.App. 1964. Generally, misrepresentation by applicant for health and accident policy is "material misrepresentation" rendering policy voidable, where it is reasonably calculated to affect action and conduct of insurer in deciding whether to accept risk by issuing policy, but misrepresentation as to trivial and temporary indispositions which do not affect general health are ordinarily deemed not "material misrepresentation."—*Brinkoetter v. Pyramid Life Ins. Co.*, 377 S.W.2d 560.—Insurance 3001.

Mo.App. 1964. Applicant who stated in application for health and accident policy that she had never had any "disease" of stomach whereas in fact less than three months earlier she had been hospitalized ten days for stomach ulcer was guilty of "material misrepresentation" rendering policy voidable.—*Brinkoetter v. Pyramid Life Ins. Co.*, 377 S.W.2d 560.—Insurance 3003(11), 3004.

Mo.App. 1940. Statement by insured, in application for reinstatement of endowment policy after lapse for nonpayment of premiums, that he had not consulted a physician, though he had consulted physician for alleged gonorrhea infection, was not an expression of "opinion," but a "statement of fact," and if the alleged gonorrhea infection was a serious ailment, as distinguished from a trivial one, then there was a "material misrepresentation" which would void the policy as a matter of law.—*Chambers v. Metropolitan Life Ins. Co.*, 138 S.W.2d 29, 235 Mo.App. 884.—Insurance 2052.

Mo.App. 1923. Failure to state, in an application for a life policy, that insured had consulted a physician and had been informed that she had a goiter, held not a "material misrepresentation" defeating recovery on the policy under V.A.M.S. § 376.580, which requires that a misrepresentation, to be material, relate to a fact contributing to insured's death.—*Emery v. New York Life Ins. Co.*, 257 S.W. 162, reversed 295 S.W. 571, 316 Mo. 1292.

N.J.Err. & App. 1943. Where insured five months prior to applying for reinstatement of life policy called physician to his home and received examination at hospital, insured's negative response to question, in application for reinstatement, as to whether he had consulted or been examined by any physician within two years, was a "material misrepresentation" entitling insurer to rescind contract of reinstatement.—*New York Life Ins. Co. v. Weiss*, 32 A.2d 341, 133 N.J.Eq. 375.—Insurance 2052.

N.Y.A.D. 3 Dept. 1985. Insured's alleged misrepresentation on application for life policy, in which insured listed his current occupations as "vice president, secretary and lumber grader," without stating that he participated to some extent in actual timbering activities such as cutting of trees and loading of logs, was not "material misrepresentation" such as to void policy; aside from testimony

of underwriter that he would have disapproved issuance of policy had he known of insured's timbering activities, there was no evidence tending to prove insurer's business practice of refusing to issue life policies to persons engaged in timbering activities. McKinney's Insurance Law §§ 3105, 3105(b).—*Winnick v. Equitable Life Assur. Soc. of U.S.*, 494 N.Y.S.2d 509, 110 A.D.2d 314, appeal denied 501 N.Y.S.2d 1024, 67 N.Y.2d 605, 492 N.E.2d 794.—Insurance 3018.

N.Y.A.D. 4 Dept. 1939. Where applicant for life policy, in response to questions concerning past medical history, stated she had had pneumonia lasting two months and had recovered and that such was a complete statement of all illnesses and sojourns in hospitals but failed to disclose curative treatments applied for approximately 11 months by a public dispensary, the last of which occurred after application was made, the omission of treatment at dispensary was a "material misrepresentation" which vitiated policy.—*Coelho v. Prudential Ins. Co. of America*, 13 N.Y.S.2d 617, 257 A.D. 398.—Insurance 3003(10).

N.Y.Sup. 1950. Insured by answering in the negative question in application for life policy if he had consulted or had been treated by a physician within five years was not guilty of making a "material misrepresentation" which would entitle insurer to rescind the policy because of the fact that about 14 months before making the application he had been examined by a physician who found that insured had no objective evidence of a coronary condition. Insurance Law, § 149, subd. 4.—*Metropolitan Life Ins. Co. v. Begelman*, 99 N.Y.S.2d 781.—Insurance 3003(11).

N.Y.Sup. 1943. Proof that insured's disclosure of rejection or postponement of insurance by another insurance company would have led insurer to decline insured's application for life policy established the misrepresentation as a "material misrepresentation." Insurance Law, § 149, subd. 2.—*Guardian Life Ins. Co. of America v. Aaron*, 40 N.Y.S.2d 687, 181 Misc. 393.—Insurance 3024.

N.Y.Sup. 1940. A marriage will not be annulled because of a mere change of mind or for a misrepresentation of the mental state, but to be a "material misrepresentation" the representation must not only have induced the action taken, but must have been adequate to induce it by offering a motive sufficient to influence the conduct of a man of average intelligence.—*Longtin v. Longtin*, 22 N.Y.S.2d 827.—Marriage 58(7).

N.Y.City Civ.Ct. 1972. In view of underwriter's testimony that had true facts of deceased's visit to doctor one day prior to delivery of life policy been known to insurer, the policy would not have been delivered, deceased's failure to disclose his visit to and treatment by doctor constituted a "material misrepresentation" by deceased within Insurance Law provision that policy is voided by material misrepresentation. Insurance Law § 149.—*Lau v. Guardian Life Ins. Co. of America*, 340 N.Y.S.2d 735, 72 Misc.2d 1069, reversed 350 N.Y.S.2d 858, 76

Misc.2d 451, on remand 355 N.Y.S.2d 950, 78 Misc.2d 332.—Insurance 3015.

Okla.App. Div. 4 1985. “Material misrepresentation” as used in law of deceit is one that is so substantial and important as to significantly affect or influence party to whom it is made.—Copeland v. Anderson, 707 P.2d 560, 1985 OK CIV APP 30.—Fraud 18.

Or. 2000. A “material misrepresentation,” for purposes of Code of Professional Responsibility, involves information that, if the decision-maker had known of it, would or could have influenced the decision-making process significantly. Code of Prof.Resp., DR 1-102(A)(3).—In re Conduct of Claussen, 14 P.3d 586, 331 Or. 252.—Atty & C 38.

Or. 2000. Clear and convincing evidence did not establish that attorney for chapter 11 debtor committed a “material misrepresentation” by failing to mention that client’s bankruptcy action was about to be dismissed in his letter to client’s life insurance company requesting that insurer surrender to client any unused premiums and/or cash value, where no representative of the insurer testified that information on the dismissal would have changed the insurer’s decision to release the funds to client and the Bar’s own expert was equivocal about whether the omission was a material misrepresentation. Code of Prof.Resp., DR 1-102(A)(3).—In re Conduct of Claussen, 14 P.3d 586, 331 Or. 252.—Atty & C 53(2).

Or. 2000. “Material misrepresentation,” for attorney disciplinary purposes, involves information that, if the decision-maker had known of it, would or could have influenced the decision-making process significantly. Code of Prof.Resp., DR 1-102(A)(3).—In re Conduct of Bennett, 14 P.3d 66, 331 Or. 270.—Atty & C 42.

Or. 1987. Substantial evidence supported finding that claimant’s failure to disclose back injury sustained while employed by first of two previous employers did not constitute “material misrepresentation” such that third and most recent employer’s carrier was justified in backup denial of responsibility for claimant’s subsequent injury; carrier of third employer was aware of back injury sustained by claimant with second of two previous employers, vitiating alleged materiality of concealed information from first previous employer.—Ebbtide Enterprises v. Tucker, 738 P.2d 194, 303 Or. 459.—Work Comp 1159.

Tenn.Ct.App. 1985. Failure to disclose information on application for insurance will constitute a “material misrepresentation” if the misrepresentation is sufficient to deny insurer information necessary for honest appraisal of insurability.—Clingan v. Vulcan Life Ins. Co., 694 S.W.2d 327.—Insurance 2964.

Tex.App.—El Paso 1996. To recover in fraud, plaintiff must first prove that defendant made a “material misrepresentation,” meaning that matter is important to defrauded party in making a decision and that a reasonable person would attach importance to and would be induced to act on the

MATERIAL MISREPRESENTATIONS

information in determining his choice of actions in the transaction in question.—Beneficial Personnel Services of Texas, Inc. v. Porras, 927 S.W.2d 177, rehearing overruled, and writ granted, vacated 938 S.W.2d 716.—Fraud 18.

Utah 1943. Evidence that insured, who was a physician, falsely informed insurer in application for health and accident policy that he had no physical defects when he knew that he had a defective right eye in which lens had been destroyed years before and at least 80 per cent. of vision had been lost, established as a matter of law a “material misrepresentation” constituting sufficient defense to recovery under policy for loss of sight of right eye alleged to have been caused by an accident sustained after policy had been issued.—Fidelity & Casualty Co. of New York v. Middlemiss, 135 P.2d 275, 103 Utah 429.—Insurance 3003(11), 3004.

MATERIAL MISREPRESENTATION OF FACT

C.A.7 1972. Letter written by labor union to employees which allegedly would lead reader to believe that union had recently won contested election at different plant and as immediate result thereof had won substantial benefits and that employees at such other plant who were merely “laid off” had been “terminated” was not “material misrepresentation of fact” sufficient to set aside election and in any event could not be regarded as having altered result, and certification of union was correct. National Labor Relations Act, § 9(c) as amended 29 U.S.C.A. § 159(c).—Louis-Allis Co. v. N.L.R.B., 463 F.2d 512.—Labor 215, 216.1.

MATERIAL MISREPRESENTATION OR OMISSION

C.A.9 (Cal.) 2002. Misrepresentation or omission is a “material misrepresentation or omission” under the securities laws if there is a substantial likelihood that the disclosure of the omitted or misrepresented fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.—Aaron v. Empresas La Moderna, S.A. De C.V., 46 Fed.Appx. 452.—Sec Reg 60.28(11), 60.46.

MATERIAL MISREPRESENTATIONS

C.A.9 1996. “Material misrepresentations” for purposes of false financial statement exception to discharge are substantial inaccuracies of type which would generally affect lender’s or guarantor’s decision. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Candland, 90 F.3d 1466, as amended.—Bankr 3353(12.15).

C.A.6 (Mich.) 1985. Misstatements of financial condition, solvency, and profitability of companies recommended by unregistered investment advisor in his newsletter were “material misrepresentations” within meaning of antifraud provisions of Securities Exchange Act and Investment Advisers Act. Investment Advisers Act of 1940, § 206, 15 U.S.C.A. § 80b-6; Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—S.E.C. v. Blavin, 760 F.2d 706.—Sec Reg 60.27(7), 223.

C.A.10 (Okla.) 1982. For purposes of policy's provision stating that policy was void if insured misrepresented any material fact concerning the insurance or the subject thereof or in case of any false swearing by insured, the insureds' sworn statements to insurer that insureds did not have anything stored anywhere other than at house damaged by fire were shown to be "false" by fact that insureds had rented storage locker shortly before fire, and such "false statements" were "material misrepresentations," in view of fact that insureds had known that fire was caused by arson and that insurer was carefully investigating insureds' claim. 36 Okl.St. Ann. § 4803.—Long v. Insurance Co. of North America, 670 F.2d 930.—Insurance 3183, 3185.

C.C.A.2 (N.Y.) 1934. "Material misrepresentations," within burglary policy, did not include all matters as to which insurer might inquire, but only matters in fact important to risk.—Hayat Carpet Cleaning Co. v. Northern Assur. Co., Limited, of London, 69 F.2d 805.—Insurance 2988.

W.D.La. 1941. Where applicant for life policy stated that he had not engaged in any aerial flights and did not contemplate aviation, whereas he had engaged in aerial flight and enrolled as flying student on the same day that he took medical examination for insurance, and insurer suspended the policy upon discovery of the facts and asked applicant to give further information and accept aviation clause, policy was rescinded, if it was ever in force, for "material misrepresentations" which constituted "warranties" when fraudulently made. LSA-R.S. 22:170, 22:173, 22:174, 22:259, 22:619, 22:626.—Warren v. New York Life Ins. Co., 37 F.Supp. 358, affirmed 128 F.2d 671.—Insurance 3017.

W.D.La. 1941. The risk caused by participation in aeronautics is serious, and misrepresentations on such subject are "material misrepresentations". LSA-R.S. 22:170, 22:173, 22:174, 22:259, 22:619, 22:626.—Warren v. New York Life Ins. Co., 37 F.Supp. 358, affirmed 128 F.2d 671.—Insurance 3017.

S.D.N.Y. 1984. Securities broker's phone call to customer, in which he told her that he did not yet have any ideas concerning appropriate stocks for her when in actuality he had purchased a stock for her account the day before, and statements to customer and her fiancé implying that customer could afford certain stock purchases because broker would "cover" for her, because customer could put stock in broker's account, or because customer's account had not yet been received from broker from which account was being transferred, were "material misrepresentations" within meaning of securities laws. Securities Exchange Act of 1934, § 10(b), as amended, 15 U.S.C.A. § 78j(b).—Jak-sich v. Thomson McKinnon Securities, Inc., 582 F.Supp. 485.—Sec Reg 60.32(3).

Bkrty.C.D.Cal. 2000. "Material misrepresentations," for purposes of the discharge exception for debts obtained through use of false financial statements, are substantial inaccuracies of the type which would generally affect a lender's or guaran-

tor's decision. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(B).—In re Osborne, 257 B.R. 14.—Bankr 3353(12.15).

Bkrty.W.D.Tenn. 1999. Chapter 7 debtor-attorney's lies to his clients regarding the status of their case, and his deliberate concealment of fact that case had been dismissed as result of his alleged negligence, were in nature of "material misrepresentations," within meaning of "false pretenses" dischargeability exception. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Waters, 239 B.R. 893.—Bankr 3353(1.20).

Cal.App.1 Dist. 1937. False representations, in sale of 16-acre vineyard, that it contained excellent variety of healthy Zinfandel grapes six years old grafted on resistant roots, and that it produced 18 tons of good grapes in one year held to constitute "material misrepresentations" as basis for cross-complaint for fraud in action to quiet title.—Duttweiler v. Washburn, 66 P.2d 219, 19 Cal.App.2d 701.—Fraud 18.

Ga.App. 1943. "Material misrepresentations", as used in statute authorizing insurer to avoid policy if material misrepresentations have been made in procurement thereof, refer to misrepresentations regarding facts which would influence action of a prudent insurer in determining whether to accept risk and what premium to charge, and misrepresentations must be such that character and nature of risk contemplated was changed from what it would have been if representations had been true. Code, §§ 56-908, 56-822.—Commercial Cas. Ins. Co. v. Jeffers, 24 S.E.2d 815, 69 Ga.App. 52.—Insurance 2958.

La.App.1 Cir. 1975. Disability insurance applicant, who answered in the negative to questions regarding his receiving medical advice in the past five years, and who answered positively a question as to whether applicant was presently in good health, did not make any "material misrepresentations" with intent to deceive so as to permit insurer to avoid insurance contract, since applicant's one visit to doctor two months prior to application gave applicant no reason to think that he had any health impairment other than the possibility that he might have future problems if he did not cut down on his drinking, and since applicant stated that he felt justified in failing to disclose hemorrhoidectomy performed 50 months before the application since he felt that he had been cured. LSA-R.S. 22:619.—Reed v. American Cas. Co. of Reading, Pennsylvania, 317 So.2d 648, writ denied 320 So.2d 914.—Insurance 3003(10).

N.Y.A.D.1 Dept. 1938. Evidence that insured applying for reinstatement of life policy represented that he was in good health and had not consulted any physician, and that insured had consulted a physician on thirty-six occasions within four years preceding date of application for reinstatement relative to his heart, glycosuria, and concussion of the brain suffered in an accident showed that reinstatement was procured by "material misrepresentations," and reinstatement was void with respect to disability and double indemnity provisions where

incontestable clause did not apply to those provisions.—*Equitable Life Assur. Soc. of U.S. v. Schusterman*, 5 N.Y.S.2d 368, 255 A.D. 54.—Insurance 2052.

N.Y.A.D. 1 Dept. 1938. An insured's concealment in applications of fact that he had received compensation from Veterans Administration and that he had been treated by physician constituted "material misrepresentations" sufficient to vitiate life policies and preclude recovery of disability benefits thereunder.—*Wersba v. Equitable Life Assur. Soc. of U.S.*, 1 N.Y.S.2d 677, 253 A.D. 210, affirmed 18 N.E.2d 856, 279 N.Y. 761.—Insurance 3003(10), 3021.

N.Y.Sup. 1942. In action on life policy, where insurer produced evidence of its practice to indicate that the application, which contained untrue answers, would have been rejected if insurer had been advised of true facts, such evidence, which was uncontradicted, established that there were "material misrepresentations" which vitiated the policy and justified directed verdict for insurer. Insurance Law, § 149.—*Peck v. Metropolitan Life Ins. Co.*, 38 N.Y.S.2d 311.—Insurance 3015.

Pa. 1990. Insured's misrepresentations in connection with application for homeowner's policy, that he had not suffered any property losses during previous five years when he had in fact suffered three separate incidents of property loss amounting to claims in excess of \$17,000, constituted "material misrepresentations" affecting risk assumed by insurer, such as would entitle insurer to common-law remedy of rescission *ab initio*.—*Metropolitan Property and Liability Ins. Co. v. Insurance Com'r of Com. of Pa.*, 580 A.2d 300, 525 Pa. 306.—Insurance 1968.

MATERIAL MISSTATEMENT

C.A.1 1987. National Transportation Safety Board was well within its authority to conclude that pilot's back-dating of his application for renewal of his pilot's first-class medical certificate was "material misstatement," as basis for revoking pilot's airline transport pilot and other licenses; false back-date could influence FAA's determination whether pilot was qualified under its rules and regulations to fly as pilot-in-command after medical certificate had expired.—*Twomey v. National Transp. Safety Bd.*, 821 F.2d 63.—Aviation 123.1.

C.A.9 (Cal.) 2001. Insured's innocent misstatement to life insurer in course of applying for life insurance policy that she did not suffer from any condition of the nervous system, when she had been treated for epilepsy for several years prior to applying for policy, was "material misstatement" which gave insurer right to rescind policy under California law, even though misstatement was not made with intent to deceive insurer, where insurer's underwriter testified that insurer would not have issued policy if it knew of insured's epilepsy. *West's Ann.Cal.Ins.Code* § 330.—*Freeman v. Allstate Life Ins. Co.*, 253 F.3d 533.—Insurance 3003(11).

C.A.6 (Mich.) 1985. Disclaimer that investment advisory "may" trade in recommended securities

for its own account was itself "material misstatement" within meaning of antifraud provisions of Securities Exchange Act and Investment Advisors Act, where it created impression that investment advisory was investment company with numerous employees whose investments were not all known to management, when in fact it was sole proprietorship, and sole proprietor had invested in 25 percent, ten percent, and ten percent respectively of publicly available stock of the three companies he had recommended. Investment Advisers Act of 1940, § 206, 15 U.S.C.A. § 80b-6; Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*S.E.C. v. Blavin*, 760 F.2d 706.—Sec Reg 60.27(4), 60.27(7), 223.

S.D.N.Y. 1954. Where proxy statement showed that corporation president had been paid nearly \$125,000 and had been paid nearly \$20,000 for entertainment and other expenses, omission from proxy statement of cost of hotel suite maintained for president was not such a "material misstatement" of compensation paid to president, even if cost of suite were considered additional compensation, as to invalidate proxy statement. Securities Exchange Act of 1934, § 14, 15 U.S.C.A. § 78n.—*Dunn v. Decca Records*, 120 F.Supp. 1.—Corp 198(3); Sec Reg 49.22(3).

N.J.Super.Ch. 1968. A "material misstatement" which would enable banking commissioner to terminate license under Secondary Mortgage Loan Act is representation that would be likely to affect decision of commissioner as to issuing or renewing a license. N.J.S.A. 17:11A-11(a, b).—*Crescent Investments Co. v. Commissioner of Banking and Ins.*, 246 A.2d 493, 103 N.J.Super. 11.—Cons Cred 4.

MATERIAL MISSTATEMENTS

C.A.7 (Wis.) 1988. Loan applicant's failure to disclose his corporation's default on \$143,500 note, prior security interest of another bank in corporation's assets, and applicant's outstanding personal loans and contingent liability had capacity to influence bank and were "material misstatements" within meaning of statute which prohibits knowingly making false statements to influence federally insured bank. 18 U.S.C.A. § 1014.—*U.S. v. Shriver*, 842 F.2d 968.—Banks 509.20.

D.N.J. 1999. Corporation's overstatements of its financial condition in press releases and filings with the Securities and Exchange Commission (SEC), made in connection with five acquisitions made by corporation, constituted "material misstatements" required to prove securities fraud; misstatements overvalued acquisitions by millions of dollars and represented high percentage of corporation's total assets and shareholder equity. Securities Act of 1933, § 17(a), 15 U.S.C.A. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—*S.E.C. v. Chester Holdings, Ltd.*, 41 F.Supp.2d 505.—Sec Reg 60.46.

MATERIAL MISTAKE

Cal. 1951. Error in compiling estimates of cost of various parts of work for the purpose of computing amount of bid to be made for contract with city to construct piping system for sewer project resulting in omission of an item amounting to almost one-third of total amount intended to be bid was a "material mistake" which justified rescission of bid, where bidder gave prompt notice of election to rescind, and city had actual notice of error before it attempted to accept bid. Civ.Code, §§ 1577, 1689, 1691, 3406, 3407.—*M. F. Kemper Const. Co. v. City of Los Angeles*, 235 P.2d 7, 37 Cal.2d 696.—*Mun Corp* 354.

Md. 1940. To justify reformation of an instrument through mutual mistake on part of parties thereto, there must be a "material mistake," that is, one which will substantially affect rights and obligations of parties.—*Brockmeyer v. Norris*, 10 A.2d 326, 177 Md. 466.—*Ref of Inst* 17(1).

Md.App. 1983. Fact that personal representative failed to prepare and file inventory within three months after his appointment listing each item in reasonably descriptive detail in violation of statute, when added to other cumulative circumstances in context of allegations of decedent's sons' amended verified petition to caveat a will, was itself "material mistake" or "substantial irregularity" sufficient to circumvent six-month limitation period for filing petition. Code, Estates and Trusts, §§ 5-304(b)(3), 7-201.—*Pellegrino v. Maloof*, 467 A.2d 1046, 56 Md.App. 338.—*Wills* 259.

Md.App. 1983. If, as alleged, personal representative, who drew will with apparent substantial ambiguity, implicitly reassured sons of decedent about subject matter of ambiguous provision, and declined to respond to correspondence predicated on what he subsequently determined to be mistaken understanding of ambiguity, he had, at least, made "material mistake" or committed "substantial irregularity" when he failed to prepare and file timely inventory pursuant to his statutory responsibility reasonably describing income producing property as asset of decedent's estate, so as to allow sons to file amended verified petition to caveat of will after six-month limitation period for filing such petitions had expired, and fact finder could find such alleged conduct to be fraudulent. Code, Estates and Trusts, § 5-304(b)(3).—*Pellegrino v. Maloof*, 467 A.2d 1046, 56 Md.App. 338.—*Wills* 259.

N.Y.A.D. 1 Dept. 1995. There was no "material mistake" in releasing medical malpractice defendants' insurer following settlement of action, and thus, release in settlement agreement was effective as to insurer; insurer fully performed pursuant to agreement, its performance was accepted by plaintiff, and fact that plaintiff's counsels' agent failed properly to purchase annuity for plaintiff did not void release.—*Agilira v. Julien & Schlesinger, P.C.*, 631 N.Y.S.2d 816, 214 A.D.2d 178.—*Insurance* 3388.

Tex.Civ.App.—Austin 1943. Where lessor and lessee when lease was executed for ranch mistakenly thought ranch contained 4,480 acres when it in

fact contained only 3,873.66 acres, and rent was 65 cents an acre under original lease and 75 cents an acre under renewal lease, figured on an acreage of 4,480 acres, the mistake as to the acreage was a "material mistake" as a matter of law so as to entitle lessee to recover excess rentals.—*Evans v. Renfro*, 170 S.W.2d 636, writ refused w.o.m.—*Land & Ten* 213(5).

Tex.Civ.App.—Tyler 1977. In light of fact that mutual mistake in regard to erroneous assumption that gas well, which was referred to in contracts providing that defendant would reenter and rework well and that plaintiff would receive certain interest in well if he paid certain share of drilling expense, was situated on south portion of 100-acre tract rather than on north portion, which was already committed to a producing oil and gas unit, led to situation under which defendant could not and would not deliver assignment of such interest to plaintiff, the mistake was "material mistake" entitling plaintiff to rescind contracts.—*Chase, Inc. v. Bostick*, 551 S.W.2d 116, ref. n.r.e.—*Mines* 84.

MATERIAL MISTAKE OF FACT

D.Kan. 1994. Failure of debtors to disclose gaming income during their Chapter 12 and Chapter 13 bankruptcy cases was shown to be "material mistake of fact" in context of their cases, that was done with "fraudulent intent," as required for bankruptcy fraud; gaming income consisted of hundreds of thousands of dollars, and knowledge of such income could have altered creditors' decisions whether to vote to confirm plan or at least made bankruptcy court skeptical of debtors' integrity and motivations, and magnitude of undisclosed income negated any suggestion that debtors were mistaken or overlooked an error. 18 U.S.C.A. § 152.—*U.S. v. Grey*, 856 F.Supp. 1515, affirmed in part, vacated in part, reversed in part 56 F.3d 1219.—*Bankr* 3861.

Minn.App. 1992. If there is mutual mistake concerning material facts pertaining to contract, contracting parties may avoid the contract, and "material mistake of fact" is one that goes to the very nature of the purchase.—*Beasley v. Medin*, 479 N.W.2d 95.—*Contracts* 93(5).

MATERIAL MODIFICATION

C.C.A.7 (Ind.) 1933. Reduction of purchase price of lumber, of which surety guaranteed delivery, would be a "material modification" releasing surety.—*National Surety Co. v. Russell*, 66 F.2d 104.—*Guar* 53(3); *Princ & S* 99.

D.Alaska 1984. Amendment to employee retirement benefit program reinstating authority to invest funds from converted profit-sharing plan in employer's stock was a "material modification," summary of which was required to be furnished participants. Employee Retirement Income Security Act of 1974, §§ 102, 102(a)(1), 104, 29 U.S.C.A. §§ 1022, 1022(a)(1), 1024.—*Burud v. Acme Elec. Co., Inc.*, 591 F.Supp. 238.—*Pensions* 47.

N.D.N.Y. 1990. Mortgage would be subordinated to interests of mechanics lienors, pursuant to New York Lien Law, because of mortgagee's failure

to secure surety payment bonds from real estate developers for protection of subcontractors before advancing funds on project, as required by terms of construction loan agreement; failure to require bond was "material modification" of loan agreement, within meaning of New York Lien Law, because it restricted or impaired rights of mechanics lienors, as third-party beneficiaries and, thus, should have been filed within prescribed period. *N.Y. McKinney's Lien Law* § 22.—*Yankee Bank for Finance & Sav., FSB v. Task Associates, Inc.*, 731 F.Supp. 64.—*Mtg* 151(3).

Bkrtcy.M.D.Fla. 2000. Under Alabama law, assignment of contract constitutes "material modification" thereof, of kind sufficient to warrant release of guarantor, since it changes contract's terms, namely, identity of one of the parties.—*In re Southern Cinemas, Inc.*, 256 B.R. 520.—*Guar* 53(2).

Bkrtcy.M.D.Fla. 1995. Lessor's consent to subtenant's removal from leased premises of railroad car which lessee had used in restaurant business was not "material modification" of lease itself, of kind which might discharge guarantors of lessee's obligations.—*In re Clements*, 185 B.R. 895.—*Guar* 53(1).

Bkrtcy.M.D.Fla. 1995. "Material modification," such as will discharge guarantor is essentially a change in terms of underlying contract, not mere change to physical premises governed by contract.—*In re Clements*, 185 B.R. 895.—*Guar* 53(1).

MATERIAL MODIFICATION OF THE OBLIGATION

N.M.App. 1998. Discharge of accommodated party, pursuant to settlement agreement with holder of promissory note, was not "material modification of the obligation" under Uniform Commercial Code (UCC) provision discharging accommodation party's obligation to extent of loss of right of recourse against discharged accommodated party, though accommodated party relinquished its sole asset and its equity in financed property pursuant to settlement agreement, thus increasing accommodation party's risk of loss. *NMSA* 1978, § 55-3-605(d).—*Venaglia v. Kropinak*, 956 P.2d 824, 125 N.M. 25, 1998-NMCA-043.—*Guar* 53(1).

MATERIAL NEGLIGENCE OF DUTY

Conn. 1930. Attorney General must bring complaint for removal of public utilities commissioners, where statutory petition alleges facts supporting charge that commissioners had been guilty of "material neglect of duty". *Gen.St.*1918, §§ 3614, 3710.—*Levitt v. Attorney General*, 151 A. 171, 111 *Conn.* 634.—*Pub Ut* 142.

MATERIAL NEW MATTER

Ind. 1889. The phrase "material new matter," in a statute authorizing a party to a judgment to file a complaint for a review for errors appearing in the proceedings, or for material new matter discovered since the rendition of the judgment, means material new facts—facts discovered after the rendition of the judgment, material to a just determination of the

case.—*Hornady v. Shields*, 21 N.E. 554, 119 *Ind.* 201.

MATERIAL NON-COMPLIANCE

Cal.App.1 Dist. 1937. Where magistrate read the complaint to a defendant at time of arraignment and then continued case so as to allow defendant time to obtain counsel, failure of the magistrate to read complaint to defendant a second time when defendant pleaded guilty after procuring counsel did not prejudice defendant nor constitute a "material non-compliance" with statute authorizing a defendant to plead guilty before committing magistrate.—*People v. Bagasol*, 70 P.2d 970, 22 *Cal.App.2d* 327.

Ill.App.2 Dist. 1992. "Material noncompliance" required for eviction of tenant in federally rent-subsidized apartment pursuant to forcible entry and detainer action requires pattern of repeated minor violations of lease, not isolated incidents. *United States Housing Act of 1937*, §§ 3, 5, 8, as amended, 42 U.S.C.A. §§ 1437a, 1437c, 1437f.—*Mid-Northern Management, Inc. v. Heinzeroth*, 174 *Ill.Dec.* 784, 599 N.E.2d 568, 234 *Ill.App.3d* 240.—*U S* 82(3.5).

Minn.App. 2002. Tenant's 17 late rental payments amounted to a series of "minor violations" of her federally subsidized rental housing agreement, not a "material noncompliance," and thus did not justify eviction, absent any evidence that late payments disrupted the livability of the project, adversely affected the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises, interfered with the management of the project, or had an adverse financial effect on the project. *United States Housing Act of 1937*, § 8, as amended, 42 U.S.C.A. § 1437f; 24 C.F.R. § 247.3.—*Oak Glen of Edina v. Brewington*, 642 N.W.2d 481.—*U S* 82(3.5).

Minn.App. 2002. A tenant's late payment under a federally subsidized rental housing agreement constitutes a "minor violation" of the rental agreement; repeated late payments constitute "material noncompliance" with the agreement, as required to terminate the tenancy, if the practice disrupts the livability of the project, adversely affects the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises, interferes with the management of the project, or has an adverse financial effect on the project. *United States Housing Act of 1937*, § 8, as amended, 42 U.S.C.A. § 1437f; 24 C.F.R. § 247.3.—*Oak Glen of Edina v. Brewington*, 642 N.W.2d 481.—*U S* 82(3.5).

MATERIAL NONDISCLOSURE

Ga.App. 1998. Creditor's designation of \$50 inspection fee as part of amount financed in construction loan was not "material nondisclosure" within meaning of Truth in Lending Act (TILA) which would entitle consumers to rescind financing contract. *Truth in Lending Act*, § 106, 15 U.S.C.A. § 1605; 12 C.F.R. § 226.4.—*Chandler v. MVM Const., Inc.*, 501 S.E.2d 533, 232 *Ga.App.* 385, reconsideration denied.—*Cons Cred* 60.

MATERIAL, NONPUBLIC INFORMATION

C.A.8 (Minn.) 1998. Attorney's knowledge, gained from partner in firm, that firm's client was contemplating tender offer was "material, nonpublic information" about target company's stock, as required to support attorney's conviction for violating Rule 10b-5; contemporaneous media reports speculating that target company would be taken over by client company did not render the information immaterial or nonpublic, since the market as whole attributed little to these reports as evidenced by lack of significant movement in target company's stock price upon dissemination of the stories. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.—U.S. v. O'Hagan, 139 F.3d 641.—Sec Reg 60.28(11), 60.28(12).

MATERIAL OBJECT

Hawai'i 2001. Statute that precludes recovery for negligent infliction of emotional distress arising solely out of damage to property or material objects, unless that distress results in physical injury or mental illness, does not apply to claims of negligent infliction of emotional distress arising from the negligent mishandling of a corpse; a corpse is neither "property" nor a "material object" for purposes of that statute. HRS § 663-8.9.—Guth v. Freeland, 28 P.3d 982, 96 Hawai'i 147.—Dead Bodies 9.

MATERIAL OBLIGATIONS

C.A.9 (Mont.) 1988. For purposes of determining whether contract for sale and purchase of personal property between debtor and cattle owner was executory contract within meaning of Bankruptcy Code, owner's duty of providing bill of sale upon demand was "material obligations" under Montana law. Bankr.Code, 11 U.S.C.A. § 547.—In re Wegner, 839 F.2d 533, on remand 83 B.R. 750.—Bankr 3106.

MATERIAL OF GAMING

Mich. 1948. The words "material of gaming", as used in act authorizing officer to search gambling place and seize all implements, apparatus or "material of gaming" found therein includes money being used as prize. Comp.Laws Supp.1940, § 17115-308.—Kosiba v. Sumeracki, 31 N.W.2d 68, 320 Mich. 322.—Gaming 60.

Mich. 1943. The words "material of gaming", as used in act authorizing officer to search gambling place and seize all implements, apparatus or material of gaming found therein, may include money being used as prize, so as to authorize seizure thereof. Pub.Acts 1931, No. 328, § 308.—People v. Krol, 8 N.W.2d 662, 304 Mich. 623.—Gaming 60.

MATERIAL OMISSION

C.A.9 (Cal.) 1994. Failure of underwriter's official statement (OS) for industrial development bonds to mention handwritten change made on guaranty, which had effect of ensuring that guaranty terminated upon default and acceleration, was not "material omission," for purposes of bondholders'

securities fraud claim against underwriter; very title of "operating deficits guaranty" revealed that guaranty would expire upon default, and bondholder's own bond analyst opined that guaranty would not also secure principal and interest upon default. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Shawmut Bank, N.A. v. Kress Associates, 33 F.3d 1477.—Sec Reg 60.28(13).

E.D.Ark. 1989. Omission in offering memorandum for limited partnership of information concerning tax-related conviction of vice-president of general partner in limited partnership was "material omission" for securities fraud purposes; criminal activity was directly related to responsibilities that vice-president was given in limited partnership, and thus, reasonable investor would certainly have considered disclosure of fact significant. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—New Equity Sec. Holders Committee for Golden Gulf, Ltd. v. Phillips, 97 B.R. 492.—Sec Reg 60.28(13).

N.D.Ill. 1993. Claim by buyers of stock in corporation that corporation, officials, and others failed to disclose adequately in prospectus corporation's contingent environmental liabilities arising from business and operations of former subsidiary sufficiently alleged "material omission" to state cause of action under Rule 10b-5, even though newspapers in New York, Los Angeles, and Chicago had indicated that environmental liability could exceed \$60 million dollars; three individual newspaper accounts were not disseminated to public with sufficient degree of intensity to render omission immaterial. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Endo v. Albertine, 812 F.Supp. 1479, reconsideration denied 1995 WL 170030.—Sec Reg 60.28(14).

E.D.Mich. 1983. Where individual purchased large amounts of securities from companies and then touted those companies in glowing terms to other prospective investors, individual had significant investment in those securities contemporaneously with or immediately after publication of its newsletters, and individual did not deal in small amounts, individual's failure to disclose his substantial ownership of stock in companies he was touting, and his intent to sell them soon after recommending that they be bought, was "material omission" in violation of section of Securities Exchange Act prohibiting the use of manipulative and deceptive devices in connection with the sale or purchase of investment securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—Securities & Exchange Commission v. Blavin, 557 F.Supp. 1304, affirmed S.E.C. v. Blavin, 760 F.2d 706.—Sec Reg 60.46.

E.D.N.Y. 1994. Misstatement of secondary overage rent for real estate joint venture's fiscal year in letter soliciting investors' consent to modification of net lease was not "material omission" for purposes of Securities Exchange Act's proxy solicitation requirements; distributions of secondary overage rent to each investor were listed correctly in same sentence, correct figure appeared in note to financial statements, and information as to prospec-

tive return of proposed modification was accurately and clearly stated in letter. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—Kahn v. Wien, 842 F.Supp. 667, affirmed 41 F.3d 1501.—Sec Reg 49.22(6).

N.D.N.Y. 1987. Failure to disclose, in joint proxy/prospectus issued in connection with merger, relationship between law firm which represented corporation to be acquired and officers and directors of acquiring corporation did not amount to “material omission,” for purposes of determining whether failure to disclose the relationship constituted violation of federal securities laws; law firm played no part in negotiating the merger, and the law firm’s representation of the acquiring corporation’s officers and directors bore no relationship to the merger. Securities Exchange Act of 1934, §§ 10(b), 14(a), 18(a), 15 U.S.C.A. §§ 78j(b), 78n(a), 78r(a); Securities Act of 1933, § 12(2), 15 U.S.C.A. § 77l(2).—Wilson v. Great American Industries, Inc., 661 F.Supp. 1555, reversed 855 F.2d 987, on remand 746 F.Supp. 251, amended on reconsideration 763 F.Supp. 688, reconsideration denied 770 F.Supp. 85, affirmed in part, reversed in part 979 F.2d 924, reconsideration denied 770 F.Supp. 85, affirmed in part, reversed in part 979 F.2d 924.—Sec Reg 49.22(3).

S.D.N.Y. 1993. If promotor fails to sell or his investment vehicles fail to qualify for promised tax benefits in one offering and same promotor then offers similar investments without disclosing failure of his previous attempts, nondisclosure may amount to “material omission” for purposes of stating securities fraud claim. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.; C.G.S.A. § 36-498(f).—Ahmed v. Trupin, 809 F.Supp. 1100.—Sec Reg 60.28(13).

E.D.Wis. 1982. Alleged failure of agent in electronic surveillance application to present exculpatory material existing in FBI investigation file was not a “material omission” requiring evidentiary hearing to challenge the veracity of the affidavit, where even if the exculpatory material had been included, affidavit would still have been sufficient to establish probable cause.—U.S. v. Balistrieri, 551 F.Supp. 275.—Tel 530.

Bkrty.M.D.Fla. 1995. For purposes of determining whether to deny discharge based on omissions in disclosure, statements regarding debtor’s interest in personal property, “material omission” exists when what is left out bears a relationship to debtor’s business or the existence and disposition of his property. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Wade, 189 B.R. 522.—Bankr 3284.

Bkrty.S.D.N.Y. 1990. False oath regarding valueless assets is a “material omission” which can lead to denial of debtor’s discharge. Bankr.Code, 11 U.S.C.A. § 727(a)(4)(A).—In re Overmyer, 121 B.R. 272.—Bankr 3283.

Bkrty.E.D.Pa. 2000. Business that holds itself out to the public as having expertise in the mortgage industry commits a “material omission,” for purposes of Pennsylvania fraud analysis, where it fails to advise its own client of the potential detri-

mental effects of entering into such a transaction.—In re Barker, 251 B.R. 250.—Brok 34.

Del.Ch. 2002. Failure of proxy statement issued in connection with proposed merger to state that a director who approved merger suffered a disabling interest or lacked independence was not a “material omission,” where statement indicated that such director would serve on surviving corporation’s board, and shareholder failed to plead particularized facts which would support a finding that serving on surviving corporation’s board’s constituted a disabling interest or lack of independence.—Orman v. Cullman, 794 A.2d 5.—Corp 583.

Del.Ch. 2002. Failure of proxy statement issued in connection with proposed merger to characterize fees director’s company was to receive in connection with merger as a conflict of interest was not a “material omission”; proxy statement did indicate that director’s company was to receive a \$3.3 million fee in connection with the merger, and board of directors was under no duty to legally characterize such fact.—Orman v. Cullman, 794 A.2d 5.—Corp 583.

Del.Ch. 2002. Failure of proxy statement issued in connection with proposed merger to disclose that company founded by director was an underwriter for corporation’s initial public offering was not a “material omission”; proxy statement did disclose director’s prior association with underwriter, and when director voted for proposed merger he no longer was employed by underwriter.—Orman v. Cullman, 794 A.2d 5.—Corp 583.

Del.Ch. 2002. Failure of proxy statement issued in connection with proposed merger to disclose financial benefits surviving corporation would reap from its exclusive trademark rights to seven of the top ten Cuban cigar brands once trade embargo with Cuba was lifted was not a “material omission,” as such financial benefits were speculative.—Orman v. Cullman, 794 A.2d 5.—Corp 583.

Fla. 2000. When material fact is omitted from search warrant affidavit, such fact constitutes a “material omission” if a substantial possibility exists that omission would have altered a reasonable magistrate’s probable cause determination. U.S.C.A. Const.Amend. 4.—Thorp v. State, 777 So.2d 385, rehearing denied.—Searches 112.

MATERIAL OMISSION DOCTRINE

Minn.App. 2001. Under “material omission doctrine,” evidence traced to a warrant with a material omission will be excluded only if, after supplying the omission, there is no probable cause and the police acted deliberately or recklessly. U.S.C.A. Const.Amend. 4.—State v. Akers, 636 N.W.2d 841.—Searches 112.

MATERIAL OMISSIONS

C.A.2 (N.Y.) 1968. Nondisclosure in circular offering corporate stock and confirmation of sale that underwriter would neither promptly remit proceeds of sales to issuer nor deliver stock to purchasers constituted “material omissions” within Securities

Act of 1933 providing civil relief in nature of rescission if sale or offering of security was by means of a prospectus or oral communication from which there were material omissions. Securities Act of 1933, § 12, and (2), 15 U.S.C.A. §§ 77l and (2).—*Demarco v. Edens*, 390 F.2d 836.—Sec Reg 25.57.

E.D.Ark. 1989. Misstatement of value of nonrecourse wraparound note included in financing for limited partnership, omission of fact that financing of property resulted in negative amortization, omission of fact that partnership's principal promoters were in precarious financial condition, and omission of fact that partnership, its promoters and its affiliates were so interrelated and interdependent that financial destruction of one could cause financial destruction of other, were "material omissions" for securities fraud purposes. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*New Equity Sec. Holders Committee for Golden Gulf, Ltd. v. Phillips*, 97 B.R. 492.—Sec Reg 60.27(6), 60.28(13).

C.D.Ill. 1994. Under Illinois law, there were "material omissions" from application for group health insurance, thus warranting avoidance of policy, where insured failed to disclose on application examinations by internist and neurologist indicating possible onset of multiple sclerosis (MS) or some type of collagen vascular process; insured did not controvert insurer's underwriter's affidavit stating that insurer would have denied coverage had it known of examination results, and fact that insurer never requested insured's records from other physicians did not mean that insurer would not have checked records of nondisclosed physicians. S.H.A. 215 ILCS 5/154.—*Berry v. American Community Mut. Ins. Co.*, 855 F.Supp. 256.—Insurance 3003(7), 3003(11).

D.Md. 1975. Failure of security sellers to disclose to buyer the extent of their previous dealings with person from whom they were buying the stock themselves and who was in effective control of the corporation and failure of the sellers to reveal the extent to which the third person was in debt to them were "material omissions" made with scienter within meaning of Securities Exchange Act prohibition against use of manipulative or deceptive devices in connection with sale of securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Wassel v. Eglowsky*, 399 F.Supp. 1330, affirmed 542 F.2d 1235.—Sec Reg 60.28(13).

E.D.N.Y. 1994. Investor in real estate joint venture failed to show that letter soliciting consent to modification of net lease on building owned by venture violated Securities Exchange Act's proxy solicitation requirements by failing to state that proposed modification, involving extension of net lease, would benefit net lessee more than joint venture; alleged omissions from consent letter were largely self-evident facts of which reasonable investor would not have needed to be informed and, thus, were not "material omissions" required for violation. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).—*Kahn v. Wien*, 842 F.Supp. 667, affirmed 41 F.3d 1501.—Sec Reg 49.22(3).

MATERIAL OR LABOR

W.Va. 1930. Machinery is "material or labor" within highway contractor's bond.—*Morton Motor Co. v. Fidelity & Cas. Co. of N. Y.*, 152 S.E. 860, 109 W.Va. 67.

MATERIAL OR PERFORMING LABOR

Del.Ch. 1934. Under public improvement bond conditioned on highway contractor's payment of every person furnishing "material or performing labor" in and about such improvement, claims for premiums on workmen's compensation policies, for telephone service, and for premiums on surety bond, held not within protection of bond. 29 Del. Laws, c. 224.—*Warner Co. v. Schoonmaker*, 174 A. 449, 20 Del.Ch. 165.—High 113(5).

Del.Ch. 1934. Under public improvement bond conditioned on highway contractor's payment of every person furnishing "material or performing labor" in and about such improvement, claims for board and labor furnished to subcontractors held not within protection of bond. 29 Del.Laws, c. 224.—*Warner Co. v. Schoonmaker*, 174 A. 449, 20 Del.Ch. 165.—High 113(5).

Del.Ch. 1934. Under public improvement bond conditioned on highway contractor's payment of every person furnishing "material or performing labor" in and about such improvement, materials need not have been designed for incorporation into the physical structure, nor have been so incorporated, to come within protection of improvement bond, but they must have been furnished to contractor and have been practically consumed in connection with completion of improvement. 29 Del. Laws, c. 224.—*Warner Co. v. Schoonmaker*, 174 A. 449, 20 Del.Ch. 165.—High 113(5).

Del.Ch. 1934. Under public improvement bond conditioned on highway contractor's payment of every person furnishing "material or performing labor" in and about such improvement, claims for rental of paver, subgrader, road pumps, pipe lines, and other equipment leased to contractor held not within protection of bond. 29 Del.Laws, c. 224.—*Warner Co. v. Schoonmaker*, 174 A. 449, 20 Del. Ch. 165.—High 113(5).

Del.Ch. 1934. Under public improvement bond conditioned on highway contractor's payment of every person furnishing "material or performing labor" in and about such improvement, claims for burlap and seine twine, for fuel, lubricating oil, and like supplies necessary to operation of machinery and consumed in use, are within protection of bond, but not claims for ordinary shovels, pick handles, or wire rope used in operating gas or steam shovels. 29 Del.Laws, c. 224.—*Warner Co. v. Schoonmaker*, 174 A. 449, 20 Del.Ch. 165.—High 113(5).

Del.Ch. 1934. Under public improvement bond conditioned on highway contractor's payment of every person furnishing "material or performing labor" in and about such improvement, claims for repairing machinery held not within protection of bond. 29 Del.Laws, c. 224.—*Warner Co. v.*

Schoonmaker, 174 A. 449, 20 Del.Ch. 165.—High 113(5).

MATERIAL OR PERMANENT CHANGE IN THE NATURE OF THE PROPERTY

N.Y.Mun.Ct. 1960. Where tenant, claiming that refrigerator belonging to landlord was defective, caused it to be removed to basement of building and installed her own refrigerator in its place, without specific consent of landlord, substitution of new refrigerator for old did not constitute an "alteration" nor such a "material or permanent change in the nature of the property," as to constitute waste or a violation of a substantial obligation of the tenancy within meaning of rent regulations. Rent and Eviction Regulations, § 52, subd. 1, McK.Unconsol.Laws, Appendix.—Parker v. Johnson, 206 N.Y.S.2d 594, 26 Misc.2d 31.—Land & Ten 278.9(0.5).

MATERIAL OR SUBSTANTIAL BREACH

Wyo. 2001. A "material or substantial breach" of a plea agreement is one that goes to the whole consideration of the agreement, and several factors are relevant to whether a breach is material or substantial, including the extent to which the non-breaching party will be deprived of the benefit it reasonably expected and the extent to which the breaching party's conduct comports with the standards of good faith and fair dealing.—Browning v. State, 32 P.3d 1061, 2001 WY 93.—Crim Law 273.1(2).

MATERIAL OR SUBSTANTIAL CHANGE IN CIRCUMSTANCES

Wyo. 1997. To decide whether showing of "material or substantial change in circumstances" has been made, as required for modification of child custody provisions of divorce decree, appellate court examines record to determine whether trial court could have reasonably concluded from evidence that such change occurred.—Sorensen v. May, 944 P.2d 429.—Child C 924.

MATERIAL OR SUBSTANTIAL CHANGE OF CIRCUMSTANCES

Tex.Civ.App.—Hous. [14 Dist.] 1979. Fact that divorced husband had remarried, that his new wife was pregnant, that he had moved into and rented his parents' house, that his children assertedly enjoyed visits with him, that he subjectively wanted to see them and that he desired that they become acquainted with an expected half-sibling did not constitute a "material or substantial change of circumstances" so as to warrant modification of order depriving husband of any access to children. V.T.C.A., Family Code §§ 14.07(a), 14.08(a, c), (c)(1).—Files v. Thomasson, 578 S.W.2d 883.—Child C 577.

MATERIAL OR SUBSTANTIAL LACK OF CONSIDERATION

Mont. 1988. Alleged discrepancy of about six percent in sale of 96.73 acres of land in gross was not "material or substantial lack of consideration",

and did not entitle purchasers to rescission; one purchaser was shown property boundaries, and no fraud, duress, or undue influence was alleged. MCA 28-2-1711.—Turner v. Ferrin, 757 P.2d 335, 232 Mont. 146.—Ven & Pur 109.

MATERIAL OR THINGS INTO A DIFFERENT STATE OR FORM

Ohio 1985. Taxpayer was not entitled to exemption from sales and use taxes on those items of computer hardware that were used by it in preparation and development of computer programs for its customers, as taxpayer did not transform or convert "material or things into a different state or form" until taxpayer actually began to encode magnetic tape with a program that taxpayer had previously developed on its computer, and as transformation or conversion of its ideas, plans, procedures, and formulas was not "manufacturing" because "no material or thing" had been transformed or converted. R.C. § 5739.01(E)(2), (R).—Interactive Information Systems, Inc. v. Limbach, 480 N.E.2d 1124, 18 Ohio St.3d 309, 18 O.B.R. 356.—Tax 1245.

MATERIAL OR TOTAL BREACH

Ill.App. 2 Dist. 1969. A "material or total breach" is a failure to do an important, substantial or material undertaking set forth in a contract.—Anderson v. Long Grove Country Club Estates, Inc., 249 N.E.2d 343, 111 Ill.App.2d 127.—Contracts 312(1).

MATERIAL PART

C.C.A.4 1940. Where pursuant to plan to bring together in one organization, assets of various corporations, old corporation transferred 92 per cent. of its assets to new corporation, and received cash and stock which represented 73 per cent. of value of the transferred assets, the transferred stock constituted "substantially all" of the assets of old corporation, and stock received therefor was a "material part" of value of transferred assets, so that a "corporate reorganization" was effected, and basis for computing gain from redemption of preferred stock received by taxpayer in new corporation in course of liquidating distribution of assets of old corporation of which taxpayer was a stockholder, was a proportionate part of basis of assets of the old corporation for which stock of new corporation was exchanged. Revenue Act 1926, § 203(a), (b)(3), (h)(1)(A), 26 U.S.C.A.Int.Rev.Acts, pages 148, 150; Revenue Act 1932, § 113(a)(6), 26 U.S.C.A.Int.Rev.Acts, page 515; Revenue Act 1934, § 113(a)(12), 26 U.S.C.A.Int.Rev.Acts, page 700.—Britt v. Commissioner of Internal Revenue, 114 F.2d 10.—Int Rev 3670.

N.D.Ill. 1973. Out-of-state defendants' alleged trips to state to consult with and advise codefendants concerning authorization, issue, sale, underwriting and registration of unregistered securities constituted "material part" of allegedly illegal acts forming core of class action to recover for violations of registration requirements of Securities Act of 1933, antifraud provisions of securities acts and for common-law fraud; thus, venue was proper in

federal district court within state and extraterritorial service of process on such defendants was authorized. Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.; Securities Exchange Act of 1934, §§ 1 et seq., 27, 15 U.S.C.A. §§ 78a et seq., 78aa.—*Burkhart v. Allson Realty Trust*, 363 F.Supp. 1286.—Sec Reg 133, 135.

N.Y.Sup. 1977. Substantial fire damage suffered by one of two buildings on lands subject to contract for sale constituted a destruction of a "material part" thereof for purposes of statute setting forth the rights of the parties in the event of destruction of a portion of the premises prior to transfer of title and possession. General Obligations Law § 5-1311.—*Lucenti v. Cayuga Apartments, Inc.*, 393 N.Y.S.2d 227, 90 Misc.2d 154, reversed 400 N.Y.S.2d 194, 59 A.D.2d 438, appeal after remand 410 N.Y.S.2d 928, 66 A.D.2d 928, appeal dismissed 416 N.Y.S.2d 242, 46 N.Y.2d 997, 389 N.E.2d 837, affirmed 423 N.Y.S.2d 886, 48 N.Y.2d 530, 399 N.E.2d 918.—*Ven & Pur* 203.

MATERIAL PARTICIPATION

C.A.5 (Ala.) 1960. The "material participation", required by 1956 amendment broadening coverage of Social Security Act to include farm owners materially participating in production or management of production of agricultural commodities, was not confined to personal activities, and such participation could be through agents or employees and quite without regard to method of their compensation. Social Security Act, § 211(a) (1), 42 U.S.C.A. § 411(a) (1); 26 U.S.C.A. (I.R.C.1954) § 1402(a) (1).—*Henderson v. Flemming*, 283 F.2d 882.—Social S 134.

C.A.9 (Cal.) 1961. "Material participation" within Social Security Act permitting income to owner of farm operated under share cropping agreement to be considered self-employment income, if he materially participates in production or management of production, includes exercise of authority by owner as to matters of substantial importance in farming operation. 26 U.S.C.A. (I.R.C.1954) § 1401(1); Social Security Act, § 211(a, b) and as amended 42 U.S.C.A. § 411(a, b).—*Conley v. Ribicoff*, 294 F.2d 190.—Social S 134.

C.A.8 (Iowa) 1987. Activities of court-appointed conservator on behalf of deceased farmer with respect to leased farmland constituted "material participation" required for special use valuation under federal estate tax; in addition to meeting minimum requirement of regularly consulting and substantially participating in financial management decisions, conservators also satisfied two additional factors by making quarterly two-hour inspections of growing crop and farm ground to check on need for fence and tile repairs and by paying one half of fertilizer, pesticide, herbicide, and seed costs incurred in farm operations, and failure to pay self-employment tax on decedent's farm income was not fatal as operator demonstrated material participation, provided reason why that tax was not paid, and agreed to assessment of relevant tax, penalty, and interest.

26 U.S.C.A. § 2032A(b)(1)(C)(ii).—*Mangels v. U.S.*, 828 F.2d 1324.—Int Rev 4184.10.

C.A.8 (Iowa) 1963. "Material," as used in Social Security Act provision permitting rental from real estate to be considered self-employment income if derived under arrangement in which there is "material" participation by owner or tenant receiving rental in production or management of production of agricultural commodity, was to be given its common and well-understood meaning, and the phrase "material participation" was not to be given a strict, unnatural or narrow construction. Social Security Act, § 211(a)(1) as amended 42 U.S.C.A. § 411(a)(1).—*Foster v. Celebrezze*, 313 F.2d 604.—Social S 134.

C.A.8 (Iowa) 1963. Provisions of farm lease, on form prepared by management company, giving landlord broad management powers having substantial effect upon production and requiring numerous periodical inspections and consultations, provided an arrangement for "material participation" in management of production which, under Social Security Act, permitted inclusion of rental income as self-employment income of landlord. Social Security Act, § 211(a)(1) as amended 42 U.S.C.A. § 411(a)(1).—*Foster v. Celebrezze*, 313 F.2d 604.—Social S 134.

C.A.5 (La.) 1964. Activities of 82-year-old farm owner whose tenants cultivated crops, receiving two thirds of crop as their share, amounted to "material participation" in production or management of production of agricultural commodities so that his income from his "landlord's share" qualified him for social security benefits where it was understood that he would inspect crops 3 or 4 times a month, pay a third of cost of fertilizer, poisons and all labor hired, absorb one third of any loss, and consult with and advise "tenants". Social Security Act, §§ 205(g), 211(a) (1) as amended 42 U.S.C.A. §§ 405(g), 411(a) (1), (b).—*Celebrezze v. Miller*, 333 F.2d 29.—Social S 134.

C.A.8 (Mo.) 1962. Statute requiring, for inclusion of owner's income from leased farm land in self-employment income for social security act purposes, that it be derived under arrangement by which the owner engages in "material participation" in production or management of production of such commodities requires something more than letting farm land on share-crop basis and prepayment of part of seed and fertilizer for which owner receives portion of crops produced by tenant farmer. Social Security Act, § 211(a) (1) as amended 42 U.S.C.A. § 411(a) (1).—*Hoffman v. Ribicoff*, 305 F.2d 1.—Social S 134.

C.A.4 (N.C.) 1961. Activities of bank, as agent for owner, in management of farm leased on shares constituted "material participation" by owner in production and management of farm within Social Security Act provision extending coverage for old age benefits to self-employment income from operation of farm in which owner has material participation. Social Security Act, §§ 205(a), 211(a) (1) as amended 42 U.S.C.A. §§ 405(a), 411(a) (1); Social Security Administration Regulations,

§ 404.1051(b), 42 U.S.C.A. Appendix.—Harper v. Flemming, 288 F.2d 61.—Social S 134.

C.A.8 (N.D.) 1963. The right to control of production on farm land, and exercise of such control, spells out "material participation" required by the Act for eligibility for social security benefits on a claim of self-employment income derived from farm land. Social Security Act, § 211(a) (1) as amended 42 U.S.C.A. § 411(a) (1).—Celebrezze v. Wifstad, 314 F.2d 208.—Social S 134.

S.D.Iowa 1986. Acts of conservator for disabled farmer did not constitute "material participation" for purpose of favorable valuation of the farmland for federal estate tax purposes, where conservator's participation was no greater than that of the landlord in a typical crop-share lease arrangement, in that no agent of conservator lived on the farm or did any physical work on the farm, lessee provided machinery and equipment, notwithstanding that conservator participated with tenant in certain punishment decisions and shared fertilizer, pesticide, herbicide and seed costs and made decisions relating to marketing landlord's share of crop and relating to long-term management matters and capital improvements. 26 U.S.C.A. §§ 2032A, 2032A(b)(1)(C)(ii), (e)(6).—Mangels v. U.S., 632 F.Supp. 1555, reversed 828 F.2d 1324.—Int Rev 4184.10.

E.D.Mo. 1965. There was substantial evidence to support decision that there was no "material participation" by farmer who leased out farmland and during year in question had spent only one week on farms in production or management of production of agricultural commodities and that accordingly his farm income did not constitute self-employment income for social security purposes. Social Security Act, §§ 201, 205(g), 211 and (a) (1), (b) as amended 42 U.S.C.A. §§ 401, 405(g), 411 and (a) (1), (b); Fed.Rules Civ.Proc. rule 56, 28 U.S.C.A.—Hoffman v. Celebrezze, 246 F.Supp. 380, reversed 369 F.2d 837.—Social S 143.3.

MATERIAL PARTICULAR

Iowa 1908. Code Supp. 1907, § 3060a14, provides that, where a negotiable instrument is wanting in any "material particular," the person in possession has prima facie authority to complete it by filling up the blank therein, etc. Held, that the word "material" was not there used as synonymous with "necessary," so as to restrict the right to filling in an omission essential to the completion of a negotiable instrument, but included all omitted matter usually found in such instruments.—Johnston v. Hoover, 117 N.W. 277, 139 Iowa 143.—Alt of Inst 12; Bills & N 60.

Mass. 1986. Defendant's admission that he intravenously injected valium into victim was corroboration in "material particular" as required to convict defendant of drugging for unlawful sexual intercourse of victim who was only witness to crime, in that testimony "corroborated in a material particular" did not need to involve disputed issue of material fact. M.G.L.A. c. 272, §§ 3,

11.—Com. v. Helfant, 496 N.E.2d 433, 398 Mass. 214.—Rape 54(2).

Vt. 1917. A renewal note having a blank line before the words "after date" was delivered, but the old note was not surrendered because the payee was told that the note was given to prevent protest of the old one, but that if it was desired to run the note through the books of the payee bank the blank could be filled in. A few days short of four months after the note was given the cashier inserted the words "four months" in the blank, canceled the old note, and entered the new one in its stead on the books of the bank. Held, that the insertion of the words in the blank was not a "material alteration," rendering the note unenforceable, in view of Negotiable Instruments Act, Laws 1912, No. 99, § 14, providing that if the instrument is wanting in any material particular, the person in possession thereof has prima facie authority to complete it by filling in the blanks therein; the term "material particular," as used, not meaning such as may be necessary to make the instrument a negotiable note, but including any particular proper to be inserted.—Howard Nat. Bank v. Arbuckle, 102 A. 477, 92 Vt. 86.

MATERIAL PARTICULARS

Colo.App. 1996. Phrase "material particulars," as used in Automobile Dealers Act provision making it a violation for vehicle dealer to willfully fail to disclose material particulars to buyer, is readily understandable and is not unconstitutionally vague; "material particulars" refers to those details concerning vehicle for sale that are essential or necessary for reasonable prospective buyer to know. U.S.C.A. Const.Amend. 14; West's C.R.S.A. § 12-6-118(3)(i).—Spedding v. Motor Vehicle Dealer Bd., 931 P.2d 480, as modified on denial of rehearing, and certiorari granted.—Licens 7(1).

MATERIAL PARTY

Ala. 1957. A "material party" is one who is really interested in suit; one against whom a decree is sought, so that his interest is in a sense antagonistic to that of complainant.—American Auto. Ins. Co. v. English, 94 So.2d 397, 266 Ala. 80.—Parties 21.

Ala. 1953. A "material party" is one who is necessary to obtain jurisdiction of relief sought but not one brought in for purpose of extending relief so that complete justice might be done.—State Farm Mut. Auto. Ins. Co. v. Sharpton, 66 So.2d 915, 259 Ala. 386.—Venue 22(3).

Miss. 1940. In action by assignee of claims of tenants against plantation companies to recover alleged usurious interest charges, for forfeiture of principal, and for accounting for price received for cotton produced by tenants, nonresident corporation was not a "necessary party" defendant, or "material party" defendant, because of alleged fact that it owned the capital stock of the plantation companies and that it and those companies had the same personnel on their boards of directors.—McRae v. Ashland Plantation Co., 192 So. 847, 187 Miss. 350.—Corp 506.

MATERIAL PHYSICAL CHANGE

Ark. 1993. "Material physical change," which may be basis for municipal improvement district to revise assessment, is basis upon which property owner may obtain, by direct action, reassessment of benefit for future. A.C.A. § 14-90-602.—Mau-melle Blvd. Water and Sewer Dist. No. 1 of North Little Rock, Ark. v. Davis, 868 S.W.2d 73, 315 Ark. 353.—Mun Corp 514(2).

MATERIAL PLEADINGS

C.C.A.7 (Wis.) 1940. Attempts of parties to condense record to include only the essentials are approved, but omission of bill of complaint upon which action is based is not approved since it constitutes a part of the "material pleadings" required by court rule to be included in the record. Fed.Rules Civ.Proc. rule 75(g), 28 U.S.C.A.—U.S. v. Gilbertson, 111 F.2d 978.—Fed Cts 691.

MATERIAL PREJUDICE

A.F.Ct.Crim.App. 2000. Even if there is error, that is plain, and affects a substantial right, Court of Criminal Appeals need not take corrective action unless there is "material prejudice" to that right, that is, the error was so significant as to influence the outcome of the trial.—U.S. v. Boyd, 52 M.J. 758, review gr in part 54 M.J. 274, affirmed 55 M.J. 217.—Mil Jus 1414.1.

Mo.App. S.D. 2001. A finding of "material prejudice" from a time extension on a senior mortgage or obligation, so that the priorities are rearranged in favor of junior lienholders, is justified only in the rare situation where the time extension can fairly be said to place the junior interest in substantially weaker position; the typical junior lienholder is normally grateful to have a time extension forestall the destruction of its lien by a senior foreclosure. Restatement (Third) of the Law of Property, Mortgages, § 7.3 cmt. b.—Burney v. McLaughlin, 63 S.W.3d 223, rehearing, transfer denied, and transfer denied.—Mtg 159, 306.

N.C.App. 1994. "Material prejudice" refers primarily to the interposition of the statute of limitations for purposes of rule providing that court may allow any process or proof of service to be amended unless it clearly appears that "material prejudice" would result to substantial rights of the party against whom process issued. Rules Civ.Proc., Rule 4(i), G.S. § 1A-1.—Franklin v. Winn Dixie Raleigh, Inc., 450 S.E.2d 24, 117 N.C.App. 28, review allowed 454 S.E.2d 250, 339 N.C. 611, affirmed 464 S.E.2d 46, 342 N.C. 404.—Proc 163.

Wyo. 1993. For purposes of plain error test, "material prejudice" results when there is no notice of charges to be defended against.—Derksen v. State, 845 P.2d 1383.—Crim Law 1032(5).

MATERIAL PREPARED FOR LITIGATION

N.Y.A.D. 1 Dept. 1965. Report of tests conducted by engineer for defendant on washing machine following institution of action for personal injuries sustained by plaintiff while using machine was "material prepared for litigation" within disclo-

sure statute and was not subject to disclosure. CPLR §§ 3101(d), 3103.—Silberberg v. Hotpoint Division of General Elec. Co., 259 N.Y.S.2d 60, 23 A.D.2d 754.—Pretrial Proc 379.

N.Y.A.D. 2 Dept. 1979. Communications preceding happening of accident did not constitute "material prepared for litigation" within purview of exclusionary provision of discovery statute. CPLR 3101(d), par. 2.—Sharapata v. Town of Islip, 414 N.Y.S.2d 374, 68 A.D.2d 925.—Pretrial Proc 38.

N.Y.A.D. 2 Dept. 1965. Reports made by defendant to his insurer and statements obtained by insurer from witnesses are "material prepared for litigation" within disclosure statute, even though they are obtained prior to commencement of action. CPLR § 3101(d), par. 2.—Zavaglia v. Engert, 258 N.Y.S.2d 720, 23 A.D.2d 790.—Pretrial Proc 387.

N.Y.A.D. 4 Dept. 1968. Report prepared by expert employed by plaintiffs and predicated on condition of floor as it existed after fall was "material prepared for litigation" and exempt from disclosure unless defendant could establish that conditions could not longer be duplicated and that withholding report would result in injustice or undue hardship. CPLR 3101(d).—Clarke v. First Presbyterian Church of East Aurora, 291 N.Y.S.2d 843, 30 A.D.2d 763.—Pretrial Proc 379.

N.Y.Sup. 1969. Identity of witnesses whose presence is learned through investigation subsequent to time of occurrence out of which a lawsuit arose as distinguished from witnesses observed by the party to be present at scene of the occurrence constitutes "material prepared for litigation" and is protected from discovery by rule. CPLR 3101(d).—Hartley v. Ring, 296 N.Y.S.2d 394, 58 Misc.2d 618.—Pretrial Proc 40.

N.Y.Sup. 1966. Statement obtained by an insurance carrier from a witness is "material prepared for litigation" within statute excluding such material from discovery and is not subject to discovery unless material can no longer be duplicated because of change in conditions and withholding statement would result in injustice or undue hardship. CPLR § 3101(c, d).—Rivera v. Carlton, 272 N.Y.S.2d 951, 51 Misc.2d 332.—Pretrial Proc 38.

N.Y.Sup. 1966. In action by motel corporation to rescind a franchise agreement with company whose employees supervised the motel and restaurant, reports made to motel corporation concerning management and operation of the motel and restaurant by defendant company were "material prepared for litigation" and thus were not available to defendant company absent a showing that the material could no longer be duplicated because of a change in conditions and that withholding of such material would result in injustice or undue hardship. CPLR § 3101(d)2.—Corona Courts, Inc. v. Frank G. Shattuck Co., 272 N.Y.S.2d 217, 50 Misc.2d 1066.—Pretrial Proc 372.

N.Y.Sup. 1966. Where agents investigating fire for 27 insurers retaining firm of experienced attorneys in fire loss cases reported evidence of incen-

diarism to such attorneys on day after fire, thereafter one attorney accompanied investigators to scene of fire, and attorneys then advised insurers to resist fire claims, investigation and reports to insurers and law firm were "material prepared for litigation" and thus unavailable to insured or loss payee, in absence of showing that withholding would result in injustice or undue hardship, even though reports could not be duplicated because burned premises had been completely refurbished. CPLR § 3101(d).—*Brunswick Corp. v. Aetna Cas. & Sur. Co.*, 269 N.Y.S.2d 30, 49 Misc.2d 1018, modified 278 N.Y.S.2d 459, 27 A.D.2d 182.—*Pretrial Proc* 373.

N.Y.Sup. 1964. A laboratory report of tests conducted upon a portion of pair of pajamas, which was an alleged duplicate of pajamas which caused plaintiff's injuries by catching fire, was not exempt from disclosure as "work product of attorney," but was "material prepared for litigation." CPLR § 3101(c, d).—*Sherman v. M. Lowenstein & Sons, Inc.*, 248 N.Y.S.2d 1000, 42 Misc.2d 770, on reargument 42 Misc.2d 771.—*Pretrial Proc* 379.

MATERIAL PROVISION

C.A.2 (N.Y.) 1998. Local managing partner of two housing projects breached "material provision" of partnership agreements, permitting its removal pursuant to the agreements, when it contracted with identity-of-interest companies after other general partners withdrew their consent for managing partner to do so, in violation of provisions requiring general partners' approval of all contracts with "affiliated persons."—*NCAS Realty Management Corp. v. National Corp. for Housing Partnerships*, 143 F.3d 38.—*Partners* 366.

N.Y.Sur. 1962. Appointment of executor is "material provision" within rule that will is not subscribed at end when any material clause follows signature of testator or witnesses. Decedent Estate Law, § 21, subd. 4.—*In re Dupin's Will*, 232 N.Y.S.2d 381, 36 Misc.2d 309.—*Wills* 111(2), 123(3).

MATERIAL PROVISIONS

Neb. 1998. "Material provisions" of holographic will, for purposes of holographic will statute, are those provisions which express donative and testamentary intent. Neb.Rev.St. § 30-2328.—*In re Estate of Foxley*, 575 N.W.2d 150, 254 Neb. 204.—*Wills* 130.

N.J.Super.A.D. 2002. Words showing donative intent constitute "material provisions" of a will, because they are the essence of any will.—*Simonelli v. Chiarolanza*, 810 A.2d 604, 355 N.J.Super. 380.—*Wills* 69.

MATERIAL PURCHASED

Ct.Cl. 1940. Where government contracting agent, soliciting bids for canvas cots, and bidder, understood that bid was not to include any amount for processing taxes, but that such taxes would be added to contract price under clause providing that prices included federal taxes previously imposed

which were applicable to the "material purchased" but that, if certain taxes were thereafter levied, and were paid by the contractor on the "articles" or "supplies," such taxes should be paid to the contractor by the government, contractor was entitled to recover processing taxes imposed, after bid was made, on canvas covering and straps, for, while strictly the "materials purchased" and the "articles" or "supplies" were the cots, they included the canvas covering and straps. Agricultural Adjustment Act, § 9(a), 48 Stat. 35, 7 U.S.C.A. § 609.—*Telescope Folding Furniture Co. v. U.S.*, 31 F.Supp. 780, 90 Ct.Cl. 635.—U S 70(33).

MATERIAL PURPOSE

S.D.N.Y. 1933. To render club dues taxable on ground club is social club, social features must be "material purpose" of its organization. 26 U.S.C.A.Int.Rev.Code, §§ 1710-1712.—*Tidwell v. Anderson*, 4 F.Supp. 789, affirmed 72 F.2d 684.—*Int Rev* 4310.

MATERIAL QUESTION

Ill.App.1 Dist. 1976. Question of ownership of funds in safe deposit boxes in action to recover funds was "material question" within statute requiring jury upon request of party to find specially upon material question of fact. S.H.A. ch. 110, § 65.—*Constas' Estate v. Constas*, 355 N.E.2d 683, 42 Ill.App.3d 223.—*Trial* 350.3(2.1).

Ill.App.2 Dist. 1955. Phrase "material question" as used in section of Civil Practice Act authorizing the practice of submitting special interrogatories on any "material question" and providing that when special finding of fact is inconsistent with general verdict the former shall control the latter, and court may render judgment accordingly, means "ultimate facts" on which rights of parties depend, and therefore interrogatories eliciting merely evidential, rather than ultimate, facts are improper. S.H.A. ch. 110, § 189.—*Packard v. Kennedy*, 124 N.E.2d 55, 4 Ill.App.2d 177.—*Trial* 350.2, 359(1).

MATERIAL QUESTION OF FACT

N.D.Ill. 1989. "Material question of fact," for summary judgment purposes, is question that might affect outcome of suit under applicable law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—*In re Energy Co-op., Inc.*, 97 B.R. 388, motion denied 1989 WL 36047.—*Fed Civ Proc* 2470.1.

N.D.Ill. 1985. "Material question of fact" precluding summary judgment is one which is outcome determinative under the governing law. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.—*Serpas v. Schmidt*, 621 F.Supp. 734, affirmed 808 F.2d 601, opinion superseded 827 F.2d 23, certiorari denied 108 S.Ct. 1075, 485 U.S. 904, 99 L.Ed.2d 234.—*Fed Civ Proc* 2470.1.

N.D.Ind. 1995. "Material question of fact", which precludes summary judgment, is question which will be outcome determinative of issue in case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—*Hites v. Patriot Homes, Inc.*, 904 F.Supp. 880.—*Fed Civ Proc* 2470.1.

N.D.Ind. 1994. "Material question of fact," for purposes of summary judgment, is question which will be outcome determinative of an issue in the case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Vandeventer v. Wabash Nat. Corp., 867 F.Supp. 790, on reconsideration 887 F.Supp. 1178.—Fed Civ Proc 2470.1.

N.D.Ind. 1993. "Material question of fact" for purpose of summary judgment motion is question which will be outcome determinative of issue in case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Japan Halon Co., Ltd. v. Great Lakes Chemical Corp., 852 F.Supp. 673.—Fed Civ Proc 2470.1.

N.D.Ind. 1992. "Material question of fact," sufficient to preclude summary judgment, is question which will be outcome determinative if issue is in that case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Ridlen v. Four County Counseling Center, 809 F.Supp. 1343.—Fed Civ Proc 2470.1.

N.D.Ind. 1992. "Material question of fact" precluding summary judgment is question which will be outcome-determinative of issue in case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Steele by Steele v. Magnant, 796 F.Supp. 1143.—Fed Civ Proc 2470.1.

N.D.Ind. 1991. "Material question of fact" sufficient to preclude summary judgment is question which will be outcome-determinative of issue in case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.; U.S.C.A. Const.Amend. 11.—Grooms v. Caldwell, 806 F.Supp. 807.—Fed Civ Proc 2470.1.

N.D.Ind. 1990. "Material question of fact," for purposes of summary judgment motion, is question which will be outcome-determinative of issue in that case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Cincinnati Ins. Co. v. Moen, 732 F.Supp. 949, affirmed in part, reversed in part 940 F.2d 1069.—Fed Civ Proc 2470.1.

N.D.Ind. 1986. "Material question of fact" sufficient to preclude summary judgment is a question which will be outcome determinative of an issue in the case.—DeRochemont v. Commissioner—Internal Revenue Service, 628 F.Supp. 957, affirmed 808 F.2d 837.—Fed Civ Proc 2470.1.

N.D.Ind. 1985. "Material question of fact," precluding summary judgment, is one that will be outcome-determinative of an issue in the case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.—Templeton v. I.R.S., 650 F.Supp. 202, affirmed 808 F.2d 838.—Fed Civ Proc 2470.1.

S.D.Ind. 1996. On motion for summary judgment, "material question of fact" is question which will be outcome determinative of issue in that case. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—AMAX Coal Co. v. U.S., 932 F.Supp. 226, opinion vacated 959 F.Supp. 990, affirmed in part and remanded 128 F.3d 613.—Fed Civ Proc 2470.1.

S.D.Ind. 1995. A "material question of fact" which will preclude summary judgment is a question which will be outcome determinative. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.—Young v. Easter Enterprises, Inc., 915 F.Supp. 58.—Fed Civ Proc 2470.1.

Ill.App.1 Dist. 1999. "Material question of fact," for purposes of court rule requiring jury, on request of any party, to find specially upon any material question or questions of fact submitted to the jury in writing, is an ultimate fact upon which the rights of the parties depend and one that controls the general verdict. S.H.A. 735 ILCS 5/2–1108.—Van Hattem v. Kmart Corp., 241 Ill. Dec. 351, 719 N.E.2d 212, 308 Ill.App.3d 121.—Trial 350.2.

Ill.App.1 Dist. 1996. Special interrogatory is properly allowed when it concerns material question of fact; "material question of fact" refers to ultimate fact or facts upon which rights of parties depend.—DiMarco v. City of Chicago, 214 Ill.Dec. 959, 662 N.E.2d 525, 278 Ill.App.3d 318, appeal denied 217 Ill.Dec. 663, 667 N.E.2d 1056, 167 Ill.2d 551.—Trial 350.2.

Ill.App.3 Dist. 1993. Special interrogatory must address material question of fact; "material question of fact" is ultimate fact upon which rights of parties depend. S.H.A. 735 ILCS 5/2–1108.—Meister v. Henson, 192 Ill.Dec. 444, 625 N.E.2d 404, 253 Ill.App.3d 619.—Trial 350.2.

Ill.App.4 Dist. 1992. Phrase "material question of fact" with respect to parties' requests that interrogatories be submitted to jury means ultimate fact or facts upon which rights of parties depend. S.H.A. ch. 110, ¶ 2–1108.—Vulcan Materials Co. v. Holzhauer, 174 Ill.Dec. 665, 599 N.E.2d 449, 234 Ill.App.3d 444, appeal denied 183 Ill.Dec. 32, 610 N.E.2d 1276, 148 Ill.2d 654.—Trial 350.2.

N.Y.A.D. 2 Dept. 1987. "Material question of fact," whether prefabricated dining car bolted to embedded foundation was "movable," precluded entry of summary judgment for tenant in suit to recover dining car as "good" pursuant to Article 9 of the Uniform Commercial Code. McKinney's Uniform Commercial Code §§ 9–101 et seq., 9–105(1)(h).—J.K.S.P. Restaurant, Inc. v. Nassau County, 513 N.Y.S.2d 716, 127 A.D.2d 121.—Judgm 181(25).

MATERIAL QUESTIONS

C.C.A.2 (N.Y.) 1945. Questions asked in course of examination by trustee in bankruptcy as to identity of persons to whom bankrupts claimed to have paid commissions where material within statute authorizing denial of discharge if bankrupt has refused to answer "material questions" approved by the court. Bankr. Act § 14, sub. c(6), 11 U.S.C.A. § 32, sub. c(6).—In re Kolb, 151 F.2d 605.—Bankr 3287.

MATERIAL REPRESENTATION

C.C.A.6 (Ohio) 1934. Insured's representation in application for life insurance policy made in 1931 that physician had not been consulted since 1925 held as matter of law "material representation" within statute. Gen.Code Ohio, § 9391.—Lytle v. Pacific Mut. Life Ins. Co. of Cal., 72 F.2d 140.—Insurance 3003(10).

N.D.Ga. 2000. Under Georgia law, "material representation" on an insurance application form is one that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance. O.C.G.A., § 33-24-7.—*McLeod v. United Presidential Life Ins. Co.*, 136 F.Supp.2d 1313, affirmed 251 F.3d 163.—Insurance 2958.

E.D.Pa. 1996. "Material representation," for purposes of showing breach of express warranty, is statement of such character that if it had not been made, transaction would not have been entered into.—*In re Sugarhouse Realty, Inc.*, 192 B.R. 355.—Contracts 205.40.

Bkrtcy.D.N.J. 2000. Under New Jersey law, omission may constitute a "material representation" for purposes of determining fraud.—*In re House of Drugs, Inc.*, 251 B.R. 206.—Fraud 9.

Ariz. 1937. Bank's representation, in requiring mortgage as security for unsecured debt, that mortgage was being taken merely as a matter of form to satisfy banking authorities and that it would not be foreclosed, held "material representation," as respects whether transaction was fraudulent.—*Stewart v. Phoenix Nat. Bank*, 64 P.2d 101, 49 Ariz. 34.—Fraud 18.

Cal. 1940. A false answer to question, in application for reinstatement of lapsed life and disability policy, whether insured had consulted a physician for any ailments since policy was issued, constituted a "material representation" justifying cancellation of disability provisions where policy permitted reinstatement only on production of evidence of insurability satisfactory to insurer and false representation was material to the risk. St.1935, p. 505 (West's Ann.Insurance Code) § 334.—*California-Western States Life Ins. Co. v. Feinstein*, 101 P.2d 696, 15 Cal.2d 413, 131 A.L.R. 608.—Insurance 2052.

Ga. 1939. A "material representation" in an application for life insurance is one that would influence a prudent insurer in determining whether to accept the risk or in fixing the amount of premium in the event of acceptance.—*Vaughn v. National Life & Acc. Ins. Co.*, 5 S.E.2d 238, 189 Ga. 121.—Insurance 3001.

Ga.App. 1989. "Material representation" that would permit avoidance of policy for misrepresentation in application is one that would influence prudent insurer in determining whether to accept risk, or in fixing amount of premium in event of acceptance of risk.—*Haugseth v. Cotton States Mut. Ins. Co.*, 386 S.E.2d 725, 192 Ga.App. 853.—Insurance 2958.

Ga.App. 1938. A misrepresentation of fact by insured in application for accident and health insurance will not void policy unless misrepresentation was "material" and changed the character, extent, or nature of risk; a "material representation" being one that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in event of such acceptance. Code 1933, §§ 56-820, 56-821.—

North American Acc. Ins. Co. v. Gilbert, 199 S.E. 768, 59 Ga.App. 104.—Insurance 3001, 3004.

Ga.App. 1937. Under statute, statements made in application for life policy may not be treated as warranties or covenants, on account of failure or falsity of which policy may be avoided, unless copy of application is attached to policy or accompanies it; but representations contained in application, if fraudulently made, and if false and material to risk, may give insurer right to avoid policy. Acts 1906, p. 107; Code 1933, §§ 56-821, 56-822. A "material representation" is one that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance.—*Bankers Health & Life Ins. Co. v. Hamilton*, 193 S.E. 477, 56 Ga.App. 569.

Ga.App. 1934. "Material representation" in application is one that would influence prudent insurer in determining whether to accept risk, or in fixing amount of premium.—*Lee v. All States Life Ins. Co.*, 176 S.E. 811, 49 Ga.App. 718.—Insurance 2958.

Ga.App. 1934. In suit on life policy, where there was evidence that insured was not on chain gang when he made application, submitting questions whether insured made alleged misrepresentation that he was employed carpenter, and whether such misrepresentation was material held proper. "Material representation" in application for life insurance is one that would influence a prudent insurer in determining whether or not to accept the risk or in fixing the amount of the premium in the event of such acceptance.—*Banker's Health & Life Ins. Co. v. Brown*, 175 S.E. 387, 49 Ga.App. 294.

Ind. 2002. A "material representation," in context of disciplinary rule prohibiting an attorney from knowingly making false statements of material fact, may be defined as one relating to matter which is so substantial and important as to influence the party to whom it is made. Rules of Prof.Conduct, Rule 3.3(a).—*In re Allen*, 783 N.E.2d 1118, motion denied.—Atty & C 37.1.

Mass. 1932. Statement in certificate of corporate condition that practically doubled amount actually paid for stock issued held "material representation," within statute making directors liable for corporate debts. G.L. c. 156, §§ 15, 36, and § 47, cl. 4.—*H.B. Humphrey Co. v. Pollack Roller Runner Sled Co.*, 180 N.E. 164, 278 Mass. 350.—Corp 339.5.

N.Y.Ct.Cl. 1943. Center line of proposed new highway as laid out in the field by state engineer constituted a "material representation" to persons submitting bids and mistake made in marking such line as result of negligence, although not act of fraud, constituted a material falsity of such character that when relied upon it amounted to a breach of contract on part of state.—*Rizzuto v. State*, 44 N.Y.S.2d 40, affirmed 48 N.Y.S.2d 135, 267 A.D. 1025.—High 113(4).

N.C. 1909. A statement in an application for life insurance that applicant had never had any

disease of the kidneys is a "material representation" within Rev.N.C.1905, § 4808, as such representation undoubtedly influenced the action of the company in accepting the risk.—*Alexander v. Metropolitan Life Ins. Co.*, 64 S.E. 432, 150 N.C. 536.

N.C.App. 1983. A representation in an application for insurance that influences insurance company to accept risk and enter into contract is "material representation."—*Michael v. St. Paul Fire and Marine Ins. Co.*, 308 S.E.2d 727, 65 N.C.App. 50.—Insurance 2958.

S.C. 1932. In application for life policy, representation which applicant knows or reasonably believes will influence insurer in fixing premiums or rejecting risk constitutes "material representation."—*Johnson v. New York Life Ins. Co.*, 164 S.E. 175, 165 S.C. 494.—Insurance 3001.

Tex.Civ.App.—Galveston 1935. "Material representation," to be material to risk, is such a representation as would induce the insurance company to decline the insurance altogether or demand the payment of a higher premium, or refuse to issue a policy with special benefits or privileges.—*Crowder v. National Life & Acc. Ins. Co. of Nashville, Tenn.*, 90 S.W.2d 267, writ dismissed.

Utah 1943. A "material representation", within insurance law, is one which ordinarily would influence a prudent insurer in determining whether to accept or reject a risk, or in fixing amount of premium in event of acceptance, or in excepting some risk or part thereof from coverage.—*Fidelity & Casualty Co. of New York v. Middlemiss*, 135 P.2d 275, 103 Utah 429.—Insurance 2958.

Wash. 1934. Every fact untruly stated in application for fire policy is "material representation," if insurer's knowledge or ignorance thereof would naturally influence insurer's judgment in making contract. Rem.Rev.Stat. § 7078.—*Perry v. Continental Ins. Co.*, 33 P.2d 661, 178 Wash. 24.—Insurance 2988.

MATERIAL REPRESENTATIONS

C.C.A.4 (W.Va.) 1935. Insured's failure to disclose that he previously had been treated by physician and that he suffered from palpitation of the heart and shortness of breath when asked whether he had consulted physician or suffered from those ailments held to require directed verdict for insurer, since such statements were "material representations" which invalidate policy without further proof of actual conscious design to defraud. Code W.Va. 1931, 56-4-21.—*Prudential Ins. Co. of America v. Loewenstein*, 76 F.2d 479.—Insurance 3003(11).

Cal. 1940. Answers to written questions set forth in applications for insurance are generally deemed "material representations" St.1935, p. 505 (West's Ann.Insurance Code) § 334.—*California-Western States Life Ins. Co. v. Feinstein*, 101 P.2d 696, 15 Cal.2d 413, 131 A.L.R. 608.—Insurance 2958.

Del.Ch. 1942. Answers by insured to questions relating to bodily ailments which were in themselves pertinent to risk to be assumed by insurer if lapsed

life policy should be reinstated were "material representations" having a direct bearing on insured's rights and were required to be substantially correct, and, if answers were incorrect in any real material respect, the misrepresentations would be a defense which could be relied on by insurer and could justify rescission of reinstatement of policy.—*Harris v. New York Life Ins. Co.*, 24 A.2d 543, 26 Del.Ch. 134.—Insurance 2052.

N.Y. 1939. Where insured, in application for reinstatement of lapsed life policy, stated that for purpose of inducing insurer to reinstate policy insured declared that he was in sound health and that within the past two years he had no disease, injury, or impairment of health and had not consulted or been treated by a physician, the statements were, as a matter of law, "material representations," especially where representations induced insurer to renew lapsed policy.—*Sommer v. Guardian Life Ins. Co. of America*, 24 N.E.2d 308, 281 N.Y. 508, reargument denied 25 N.E.2d 141, 282 N.Y. 585.—Insurance 2052.

Okla. 1946. Representations made by agent of real estate broker to one proposing to purchase furniture and equipment and good will of a rooming house, relative to the net income from the house, were "material representations" for which the broker was responsible and not merely "trade talk".—*Jones v. Spencer*, 173 P.2d 745, 197 Okla. 608, 1946 OK 285.—Brok 102.

Va. 1938. As respects rights under North Carolina automobile liability policy, character of vehicle insured and purposes to which it was to be put were "material representations." C.S.N.C. § 6289.—*Phoenix Indem. Co. v. Anderson*, 196 S.E. 629, 170 Va. 406.—Insurance 3006.

MATERIAL RESPECT

N.D.Tex. 1975. Where IRS learned of clerical error in naming wrong corporation in notice and demand upon responsible corporate officer to pay employees' withheld income and social security taxes and corrected copies of notice and demand by interlining the name and address of correct corporation after limitation period for assessment had run, correction dealt with information not required so it was not a correction which dealt with assessment in a "material respect" and was not improper under statute permitting supplemental assessment if original is deficient in any material respect. 26 U.S.C.A. (I.R.C.1954) § 6204.—*Allan v. U.S.*, 386 F.Supp. 499, affirmed 514 F.2d 1070.—Int Rev 4540.

Tex.App.—Austin 1996. Appellees failed to successfully defend trial court's judgment in "material respect," thus warranting reversal of attorney fee award conditioned on successful defense of judgment in material respects in event of appellate review; appellate court had reversed nearly all of relief granted to appellees in trial court's judgment.—*City of Austin v. Quick*, 930 S.W.2d 678, rehearing overruled, and writ granted, affirmed 7 S.W.3d 109.—Costs 194.25.

MATERIAL RIGHTS

Del.Supr. 1993. Amendment modifying order which has authorized sheriff's sale, to accomplish order's intent of effectuating equitable foreclosure, did not affect "material rights" of parties, and thus was within authority of court of chancery. 10 Del.C. § 371.—*Handler Const., Inc. v. CoreStates Bank, N.A.*, 633 A.2d 356.—Mtg 502.

MATERIAL RISK

Ala. 1933. Insured's previous treatment in hospital for serious heart and kidney trouble being a "material risk," her false representation in application that she had never been under treatment in hospital held to preclude recovery on life policy.—*Metropolitan Life Ins. Co. v. Dixon*, 148 So. 121, 226 Ala. 603.—Insurance 3003(11).

Ala.Civ.App. 1972. A "material risk" is any previous affection which might reasonably have been considered a menace to prolongation of life of insured and which, had it been revealed, would have resulted in rejection of application for life policy.—*Bankers Life & Cas. Co. v. Long*, 266 So.2d 780, 48 Ala.App. 570, appeal after remand 311 So.2d 324, 54 Ala.App. 604, reversed 311 So.2d 328, 294 Ala. 67, on remand 311 So.2d 331, 54 Ala.App. 729, appeal after remand 345 So.2d 1321.—Insurance 3003(4).

Ala.App. 1952. A "material risk" is any previous affection which might reasonably have been considered a menace to the prolongation of life of insured and because of which, had it been revealed, application for life policy would have been rejected.—*Metropolitan Life Ins. Co. v. Fox*, 64 So.2d 122, 37 Ala.App. 31, certiorari denied 64 So.2d 135, 258 Ala. 579.—Insurance 2958.

Ala.App. 1949. A "material risk", within meaning of rule that a misrepresentation in application for life policy containing warranty as to sound health at time of issuance of policy, as to a "material risk", will render policy void, is any previous affection which might reasonably have been considered a menace to the prolongation of the life of the insured, and which, had it been revealed, would have caused rejection of application. Code 1940, Tit. 28, § 6.—*Liberty Nat. Life Ins. Co. v. Trammell*, 51 So.2d 167, 35 Ala.App. 300, reversed 51 So.2d 174, 255 Ala. 1, certiorari denied 51 So.2d 176, 255 Ala. 236.—Insurance 3003(8).

La.App. 4 Cir. 1997. "Material risk" exists as result of treatment, and physician is required to disclose risk, when reasonable person, in what physician knows or should know to be the patient's position, would likely attach significance to risk or cluster of risks in deciding whether to forego proposed therapy. LSA-R.S. 40:1299.40, subd. A.—*Coscino v. Wolfley*, 696 So.2d 257, 1996-0702 (La. App. 4 Cir. 6/4/97), rehearing denied, writ denied 705 So.2d 1100, 1997-2317 (La. 1/9/98), writ denied 705 So.2d 1102, 1997-2539 (La. 1/9/98).—Health 906.

N.J.Super.A.D. 1997. "Material risk" of proposed course of medical treatment, of which physi-

cian has duty to warn patient, is one that reasonable patient, in what physician knows or should know to be patient's position, would be likely to attach significance to risk or cluster of risks in deciding whether to forego proposed therapy or to submit to it.—*Posta v. Chung-Loy*, 703 A.2d 368, 306 N.J.Super. 182, certification denied 713 A.2d 500, 154 N.J. 609.—Health 906.

MATERIAL RISKS

La. 1988. Under informed consent doctrine, doctor has duty to disclose to patient all "material risks" of proposed treatment; risk is material when reasonable person in what doctor knows or should know to be patient's position would be likely to attach significance to risk or to cluster of risks in deciding whether to forego proposed therapy.—*Hondroulis v. Schuhmacher*, 553 So.2d 398, rehearing denied, appeal after remand 612 So.2d 859, writ not considered 615 So.2d 335.—Health 906.

MATERIALS

C.A.Fed. 1988. Pails and drums containing imported raspberries were primary containers and an integral part of the merchandise and thus "materials" required to be considered in determining anti-dumping duties. Tariff Act of 1930, § 773(e)(1)(A), as amended, 19 U.S.C.A. § 1677b(e)(1)(A).—*Washington Red Raspberry Com'n v. U.S.*, 859 F.2d 898.—Cust Dut 21.5(3).

C.A.10 (Colo.) 1999. "Materials," as used in statute prohibiting possession of three or more matters containing visual depictions of minors engaged in sexually explicit conduct which were produced using materials shipped or transported in interstate commerce, encompasses not only tangible matters that go into a visual depiction, that is, that become an "ingredient" of the visual depiction, but also tangible matters that are used to give being, form or shape to, but that do not necessarily become a part or "ingredient" of, the visual depiction; thus, "materials" does not refer to ingredients of an object, such as ingredients or components of a visual depiction. 18 U.S.C.(1994 Ed.) § 2252(a)(4)(B).—*U.S. v. Wilson*, 182 F.3d 737.—Obscen 5.2.

C.A.10 (Colo.) 1999. Evidence was insufficient to support conclusion that diskettes in defendant's possession were "materials" that traveled in interstate commerce and were used to produce his graphics files, so as to establish jurisdictional element of offense of possession of three or more matters containing visual depictions of minors engaged in sexually explicit conduct which were produced using materials shipped or transported in interstate commerce; although experts established that computer graphics files could be stored or contained on diskettes, their testimony left unanswered the question whether a computer graphics file is produced or created prior to being recorded on a particular storage media, or whether it only comes into being at or after the point it is recorded on the storage media. 18 U.S.C.(1994 Ed.) § 2252(a)(4)(B).—*U.S. v. Wilson*, 182 F.3d 737.—Obscen 17.

C.C.A.4 (N.C.) 1925. Construction of contractor's bond governed by law of state. In action on bond conditioned on contractor's payment of persons furnishing 'material' for construction of road, the question whether hay and stock feed consumed by live stock employed on the road contract were "materials," within the contract, is governed by the state law.—*Early & Daniel Co. v. American Sur. Co. of New York*, 5 F.2d 670.—High 113(5).

C.C.A.4 (N.C.) 1925. Hay and stock feed, consumed by live stock used in construction of road, held "materials," within contractor's bond. Hay and stock feed, consumed by live stock employed in the construction of a road, held "materials," within bond conditioned on contractor's payment to all persons furnishing "materials" in or about construction of road.—*Early & Daniel Co. v. American Sur. Co. of New York*, 5 F.2d 670.—High 113(5).

C.C.A.4 (N.C.) 1925. Hay and stock feed, consumed by live stock used in construction of road, held "materials," within contractor's bond.—*Early & Daniel Co. v. American Sur. Co. of New York*, 5 F.2d 670.—High 113(5).

D.Del. 1974. Because supplies were purchased for defendant apartment complex and were handled by defendant's maintenance personnel, supplies had come into actual physical possession of defendant who was their "ultimate consumer," and since complex was not a "producer, manufacturer or processor" of the supplies they were not "goods" as defined in Fair Labor Standards Act, but where amendment to Act, inserting the word "materials" in definition of "enterprise engaged in commerce or the production of goods for commerce," disclosed a legislative purpose to make the Act applicable to employers such as defendant after amendment's effective date, complaint would be dismissed only insofar as it purported to allege violations of Act prior to effective date of the amendment on May 1, 1974. Fair Labor Standards Act of 1938, § 3(i, s) as amended 29 U.S.C.A. § 203(i, s).—*Brennan v. Jaffey*, 380 F.Supp. 373, 21 Wage & Hour Cas. (BNA) 971.—Commerce 62.46; Fed Civ Proc 1827.1.

W.D.Ky. 1936. Word "materials" in city sewer construction contract specifications, defining word "earth," as used therein, to mean "all kinds of materials, including old masonry" to be excavated, held to mean any substance or matter of which anything is or may be made, including rock.—*Davis v. Commissioners of Sewerage of City of Louisville*, 13 F.Supp. 672, affirmed in part, reversed in part 88 F.2d 797.—Mun Corp 352.

E.D.N.Y. 1995. Rebar blocks provided as building material to prime contractor on government construction project could be considered "materials" within meaning of Miller Act. Miller Act, § 2 et seq., 40 U.S.C.A. § 270b et seq.; Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—U.S. for Use and Benefit of Dragone Bros. Inc. v. Moniaros Contracting Corp., 882 F.Supp. 1267.—U S 67(6).

N.D.N.Y. 1980. Addition of word "materials" after word "goods" in Fair Labor Standards Act defining an enterprise engaged in commerce or in

production of goods for commerce as an enterprise with employees handling, selling, or otherwise working on goods or materials signified congressional intent to bring within coverage of Act those businesses which handle products consumed in course of their operations. Fair Labor Standards Act of 1938, § 3(s) as amended 29 U.S.C.A. § 203(s).—*Marshall v. Baker*, 500 F.Supp. 145, 24 Wage & Hour Cas. (BNA) 1317.—Commerce 62.43, 62.44(1).

E.D.Va. 1994. "Materials" covered by Miller Act bond do not include cost of capital equipment. Miller Act, § 1, 40 U.S.C.A. § 270a.—U.S. for Use and Benefit of Skip Kirchdorfer, Inc. v. Aegis/Zublin Joint Venture, 869 F.Supp. 387.—U S 67(11).

Ala. 1932. Steel rails and galvanized piping used as equipment in construction of bridge held not "materials" or "supplies" authorizing recovery on contractor's bond.—*American Sur. Co. of New York v. Mitchell*, 140 So. 429, 224 Ala. 455.—High 113(5).

Ariz. 1927. "Materials" for which surety on contractor's bond is liable includes supplies which can be used but once, but not supplies good for another job. Under contractor's bond obligating surety to pay for "materials" furnished in work or performance thereof, anything furnished which becomes in effect part of plant or tools used by contractor in work, and which is intended to and can be used in another job, is not within term "materials," though deterioration therein may have been considerable, but supplies furnished, if they can be used but once in performance of work, are within condition of bond, though on completion of project there are no material remains of such supplies.—*National Sur. Co. v. Arizona Grocery Co.*, 259 P. 404, 32 Ariz. 399.—High 113(5).

Ariz. 1927. "Materials" for which surety on contractor's bond is liable includes supplies which can be used but once, but not supplies good for another job.—*National Sur. Co. v. Arizona Grocery Co.*, 259 P. 404, 32 Ariz. 399.—High 113(5); Pub Contr 50.

Ariz.App. Div. 1 1999. "Materials," "inventories," and "work in progress," within meaning of regulation defining the property subject to the title-passing provision that is required in fixed-price government contracts, includes indirect costs such as overhead and independent research and development supplies furnished by the contractor. 48 C.F.R. § 52.232-16(d)(2)(i).—*Motorola, Inc. v. Arizona Dept. of Revenue*, 993 P.2d 1101, 196 Ariz. 137.—U S 70(10).

Ariz.App. Div. 1 1999. "Materials," "within meaning of regulation defining the property subject to the title-passing provision that is required in fixed-price government contracts, is not limited to supplies consumed in doing the physical work necessary to fulfill a contract, but also includes mental work that guides and underpins the physical work. 48 C.F.R. § 52.232-16(d)(2)(i).—*Motorola, Inc. v. Arizona Dept. of Revenue*, 993 P.2d 1101, 196 Ariz. 137.—U S 70(10).

Cal. 1918. Rentals for use of horses and tools used in highway construction are “supplies,” if not “materials,” within St.1897, p. 201, requiring county contractors to give bond to pay for materials and supplies furnished for performance of work.—*Bricker v. Rollins & Jarecki*, 173 P. 592, 178 Cal. 347.—High 113(5).

Cal. 1918. Tubing at the end of which was attached a knife, used solely as an appliance in perforating the casing of a well, which the contractor retained unimpaired save for wear and tear, was not, but rental and transportation of tools used were, “materials” or “supplies” within St.1897, p. 201, relating to contractors’ bonds on public improvements, and requiring a bond to pay for material and supplies furnished “for the performance of the work.”—*Sherman v. American Surety Co. of New York*, 173 P. 161, 178 Cal. 286.

Cal. 1889. The term “materials,” in a statute giving a lien to materialmen for materials sold to be used in constructing certain improvements, means materials which become a part of the completed work, and does not include tools of trade, as picks, shovels, etc.—*Gordon Hardware Co. v. San Francisco & S.R.R. Co.*, 22 P. 406, 3 Cal.Unrep. 140, affirmed 23 P. 1025, reversed 25 P. 125, 86 Cal. 620.

Cal. 1860. The term “materials,” in a statute giving mechanics’ liens for materials furnished in the construction and repair of any building, wharf, or other superstructure, includes a house purchased to constitute a part of a larger structure.—*Selden v. Meeks*, 17 Cal. 128.

Cal.App. 1 Dist. 1928. One furnishing articles of food, consisting of fruit, vegetables, onions, beans, and tomatoes, to contractor erecting dam, which were used and consumed in the construction work, held not entitled to mechanic’s lien under Code Civ.Proc. § 1183, giving lien to persons furnishing materials; “materials” being distinguished from “provisions,” which relates to a stock of food.—*Arata & Peters v. Snow Mountain Water & Power Co.*, 267 P. 932, 92 Cal.App. 227.

Cal.App. 3 Dist. 1930. Words “supplies,” “materials,” etc., in public building contractor’s bond, referred to something going into or consumed in the performance of the work (St.1919, p. 487).—*People’s Nat. Bank v. Southern Sur. Co.*, 288 P. 827, 105 Cal.App. 731.—*Mun Corp* 347(1); *Pub Contr* 50.

Cal.App. 5 Dist. 2001. Signs that taxpayer manufactured and installed on real property pursuant to construction contracts were “fixtures,” rather than “materials,” for sales tax purposes; signs did not lose their identity as such when installed, and they could be removed without damaging or destroying structures to which they were attached.—*Richard Boyd Industries, Inc. v. State Bd. of Equalization*, 107 Cal.Rptr.2d 520, 89 Cal.App.4th 706, rehearing denied, and review denied.—Tax 1241.1.

Conn. 1997. Unpaid workers’ compensation insurance premiums owed by subcontractor were not “materials” or “services” under mechanic’s lien statute, since such premiums had not enhanced the

property in some physical manner, laid groundwork for physical enhancement of the property, or played essential part in scheme of physical improvement of the property. C.G.S.A. § 49-33.—*Thompson and Peck, Inc. v. Division Drywall, Inc.*, 696 A.2d 326, 241 Conn. 370.—*Mech Liens* 35.

Conn. 1958. Where aeronautical manufacturer used production materials such as X-ray films, testing chemicals, oil and gasoline in its manufacture, in assembly-line production, of aircraft engines and helicopters for sale, and it was stipulated that such materials constituted “materials” within Sales and Use Tax Act and that manufacturer made no use of such materials except in process of manufacture in industrial plant of tangible personal property for sale, the purchases of such materials were exempt from sales and use taxes on ground that such materials were consumed and used “directly” in the manufacture of property to be sold. Gen.St.1949, §§ 2094(4), 2096(r).—*United Aircraft Corp. v. Connelly*, 140 A.2d 486, 145 Conn. 176.—Tax 1245.

Del.Super. 1905. The word “materials,” in a bond of a government contractor under a contract for the construction of a sewer, conditioned, as required by act of Congress, on his making payment to all persons supplying him “labor and materials” in the prosecution of the work, does not include posts, lumber, and gravel furnished him; the same being equipments used in the performance of the contract.—*U.S. v. Jacoby*, 61 A. 871, 21 Del. 576, 5 Penn. 576.—U S 67(7.1).

Fla.App. 1 Dist. 1962. Insurance premiums owed by contractor cannot be considered as “labor” or “materials”, for purposes of performance bond of contractor agreeing to furnish labor and materials.—*Santa Rosa County for Use and Benefit of J. E. Daniels, Inc. v. Raymond Blanton Const. Co.*, 138 So.2d 518.—*Princ & S* 81.

Fla.App. 2 Dist. 1984. Products supplied by heating company to subcontractor, which included diesel fuel, motor oil, lubricants, and other petroleum products, were “materials” within meaning of payment bond statute. West’s F.S.A. § 713.23.—*Standard Heating Service, Inc. v. Guymann Const., Inc.*, 459 So.2d 1103.—*Princ & S* 82(2).

Ga.App. 1940. Premiums for contracts of insurance with road contractor, one covering workmen’s compensation and employer’s liability coverage, and the other public liability and property damage coverage, were not covered by statute dealing with bonds for public contractors, and providing that no contract for public works shall be valid unless contractor shall give bond, payable to state or other body contracted with, with good and sufficient surety, for use of the obligee and of all persons doing “work” or furnishing “skill,” “tools,” “machinery,” or “materials” under or for the purpose of such contract, and hence the insurer could not recover the amount of the premiums from the road contractor’s surety. Code 1933, §§ 23-1705 et seq., 114-601, 114-602.—*Seibels, Bruce & Co. v. National Sur. Corp.*, 11 S.E.2d 705, 63 Ga.App. 520.—High 113(5).

Ga.App. 1931. Gasoline and oil furnished contractor performing public work are "materials," for which materialman is indemnified under bond of contractor (Laws 1916, p. 95, § 1).—Sinclair Refining Co. v. Colquitt County, 157 S.E. 358, 42 Ga. App. 718.—Counties 123; Pub Contr 49.

Idaho 1974. Where tire company furnished to public works contractor tires and antifreeze and where the supply was essential to maintain in operational condition a front end loader used by the contractor on the public works project, the supplies were "materials" within Public Contracts Bond Act providing right to sue to claimant which has furnished materials used by contractor in the prosecution of the work provided for in the public works contract. I.C. §§ 54-1901 et seq., 54-1926, 54-1927.—City of Weippe for Use and Benefit of Les Schwab Tire Centers of Idaho, Inc. v. Yarno, 528 P.2d 201, 96 Idaho 319.—Pub Contr 49.

Ill. 1947. An item in building fund appropriation ordinance of board of education for "materials" charged to "materials" account nature of materials or use to which they were to be put not being specified was a proper charge against building fund since quoted term includes everything used in construction or repair of school buildings.—People ex rel. Schlaeger v. Riche, 71 N.E.2d 333, 396 Ill. 85.—Schools 103(3).

Ind.App. 1943. Slugs of type sold by typesetter for use by printers were not "tools", but were "materials" "directly consumed" by use or application in producing tangible personalty within income tax statute, so that sales thereof were "wholesale sales" on which typesetter was required to pay rate of only one-fourth of one per cent. Burns' Ann.St. § 64-2603(a).—Department of Treasury, Gross Income Tax Division v. Ranger-Cook, Inc., 49 N.E.2d 548, 114 Ind.App. 107.—Tax 1062.

Ind.App. 1905. A person furnishing coal consumed in the operation of a steam shovel used by a contractor in the construction of a railroad is not entitled to a lien on the right of way and franchises of the railroad company, under Burns' Ann.St.1901, § 7265, giving such lien for labor or "materials" used in the construction or repair of any railroad.—Cincinnati, R. & M.R. Co. v. Shera, 73 N.E. 293, 36 Ind.App. 315.

Iowa 1978. Term "materials" in Department of Environmental Quality rule proscribing allowing emissions of fugitive dust was not unconstitutionally vague since all "materials" which give rise to emission of particulate matter proscribed are, logically, properly within purview of the rule and to enumerate the specific "materials" which might violate the rule would omit offending substances. I.C.A. §§ 455B.1 et seq., 455B.12, subd. 2; U.S.C.A.Const. Amend. 14.—Pottawattamie County v. Iowa Dept. of Environmental Quality, Air Quality Commission, 272 N.W.2d 448.—Environ Law 278.

Iowa 1932. Provision defining "materials" in statute respecting claims for labor and material on public improvements must be construed strictly (Code 1931, § 10299, subsec. 4).—Coon River Co-op. Sand Ass'n v. McDougall Const. Co. of Sioux

City, 244 N.W. 847, 215 Iowa 861.—High 113(5); Pub Contr 49.

Iowa 1932. Claim for meals furnished to employees of highway contractor held not "materials" within statute requiring bond by contractor for materials furnished (Code 1931, § 10299 et seq., and § 10299, subsec. 4).—Coon River Co-op. Sand Ass'n v. McDougall Const. Co. of Sioux City, 244 N.W. 847, 215 Iowa 861.—High 113(5); Pub Contr 49.

Iowa 1932. Claim for meats and groceries purchased by employee of highway contractor for employee and family held not "materials" within statute requiring bond by contractor for materials furnished. Code 1931, § 10299 et seq.; and § 10299, subsec. 4.—Coon River Co-op. Sand Ass'n v. McDougall Const. Co. of Sioux City, 244 N.W. 847, 215 Iowa 861.—High 113(5).

Iowa 1931. Gasoline, oils, and greases used in hauling other material actually going into improvement constitute "materials" furnished in construction of public improvement (Code 1927, § 10299, par. 4, as amended by Acts 43d Gen.Assem. c. 244, § 1; Code 1927, § 10305).—Rainbo Oil Co. v. McCarthy Improvement Co., 236 N.W. 46, 212 Iowa 1186.—High 113(4); Pub Contr 28.

Ky. 1934. Road construction machinery, lost or mislaid equipment, repairs of machinery, payment of freight therefor, and damage thereto because of insufficiency to withstand work, held not "materials" or "supplies" within highway subcontractor's bond.—Century Indem. Co. of Chicago, Ill. v. Shunk Mfg. Co., 68 S.W.2d 772, 253 Ky. 50.—High 113(5).

La. 1974. Testimony by president of contracting company and by homeowner's architect that the term "materials," as used in contract, included the total price charged by subcontractors to the general contractor for both labor and materials, and that both labor and materials furnished by subcontractors were included in "overhead," which was set at 15% of the cost of all "materials" and that "profit," which was set at 10% of all "labor and materials" was to be computed upon labor and materials furnished by the general contractor and the overhead charge justified reforming contract to reflect such meanings.—B. Segall Co., Inc. v. Trahan, 290 So.2d 854.—Ref of Inst 45(2).

La. 1930. A surety on a bond guaranteeing the performance of a contract with the state for the construction of a highway in accordance with LSA-R.S. 38:2241-38:2247 was not liable for claims by reason of articles of merchandise sold to laborers for their personal use while they were working on the road, as such claim was not for "materials" that went into construction of road as required.—State v. Miller, 126 So. 422, 169 La. 914.

Mass. 1912. Rev.Laws, c. 104, § 1, authorizing certain cities, for the prevention of fire, to regulate the inspection, materials, construction, alteration, and use of buildings, does not authorize an ordinance prohibiting reshingling of a roof, since the section does not comprehend repairs; the word

"construction" being used to mean the erection of a new building or an addition to an old one, the word "alteration," to denote a change or substitution in a particular of one part of a building for a building different in that particular, the word "use" indicating the purpose for which the building may be occupied, and the word "materials" being a word of general signification, and necessarily ancillary to the other more definite terms employed in the statute.—*Commonwealth v. Hayden*, 97 N.E. 783, 211 Mass. 296.

Mass. 1909. The word "materials" in Pub.St. 1882, c. 16, § 64, requiring the contractor for a public work, on which liens might attach for materials if it was for a private owner, to give bond for payment for such materials, and chapter 191, § 1, giving a lien for materials used in the erection of a structure, etc., includes gunpowder used by a contractor for an aqueduct for a water supply in blasting for the trench, where the greater part of the material excavated was used in the construction of the aqueduct, but does not include coal burned in engines used on the work.—*George H. Sampson Co. v. Com.*, 88 N.E. 911, 202 Mass. 326.—*Pub Contr* 50.

Mich. 1933. Shores rented to public building contractor for use instead of lumber forms, held not "materials" within contractor's bond (Comp.Laws 1929, § 13136).—*Stoddard Dick Co. v. Michigan Sur. Co.*, 251 N.W. 373, 265 Mich. 207.—*Counties* 123; *Pub Contr* 49.

Mich.App. 1991. Statute permitting discovery of "other materials" in child protective proceeding did not give probate court authority to allow parents' attorney to interview children, who had been placed in foster care following allegations that they were sexually abused by parents, given that "materials" enumerated in statute included only items in tangible form or within knowledge of Department of Social Services. MCR 5.922(A)(1, 2).—*Matter of Lemmer*, 477 N.W.2d 503, 191 Mich.App. 253.—*Infants* 208.

Minn. 1923. Provisions, groceries, and meats are not included in the word "materials" as contained in Gen.St.1913, § 8245, requiring public contractors to furnish bonds, and persons furnishing such provisions, groceries, and meats cannot collect from the surety on such bonds.—*Westling v. Republic Cas. Co. of Pittsburgh*, 195 N.W. 796, 157 Minn. 198.—*Counties* 123; *Pub Contr* 49.

Minn. 1914. Axes, hack-saw blades, horse feed, and provisions held not "materials" furnished in the execution of the contract within a contractor's bonds.—*Fay v. Bankers' Sur. Co.*, 146 N.W. 359, 125 Minn. 211, *Am. Ann. Cas.* 1915C, 688.—*Drains* 49.

Minn.App. 1992. Infectious waste processing facility was permitted use under city zoning ordinance which permitted "processing and storage of materials, goods and products"; decontamination and incineration fall within plain and ordinary meaning of "processing," there is nothing unique about infectious waste that would exclude it from plain and ordinary meaning of "materials," and interpreting

zoning ordinance to allow infectious waste facility as permitted use was consistent with state Infectious Waste Control Act. M.S.A. §§ 116.76–116.83.—*Medical Services, Inc. v. City of Savage*, 487 N.W.2d 263.—*Zoning* 278.1.

Miss. 1926. Oil and gasoline furnished a contractor for use in operating machinery used by him in digging canals and ditches for a drainage district are "materials" used in the prosecution of the work within the meaning of section 1, chapter 217, Laws of 1918.—*Standard Oil Co. v. National Surety Co.*, 107 So. 559, 143 Miss. 841.

Mo. 1908. Blasting powder, dynamite, fuse, and caps, necessarily used by contractors in building a sewer, are "materials," within the meaning of a guaranty that the contractors would pay for material used in the work.—*Kansas City, to Use of Kansas City Hydraulic Press Brick Co. v. Youmans*, 112 S.W. 225, 213 Mo. 151.—*Mun Corp* 347(1).

Mo. 1908. Tools, implements, and appliances are not "materials," within the meaning of a guaranty that contractors would pay for material used in the work of building a sewer; and the fact that they were entirely consumed therein, being worn out and broken, does not change the rule.—*Kansas City, to Use of Kansas City Hydraulic Press Brick Co. v. Youmans*, 112 S.W. 225, 213 Mo. 151.—*Mun Corp* 347(1).

Mont. 1927. General rule is that, when bond mentions only material, surety is liable for payment for that which has gone into and becomes part of completed work and not all supplies furnished, since "supplies" is broader term than "materials" and means that which is or can be supplied, sufficient for use or need, a quantity of something supplied or on hand, whereas "material" means substance matter of which a thing is made.—*Gary Hay & Grain Co. v. Fidelity & Deposit Co. of Maryland*, 255 P. 722, 79 Mont. 111.

N.J.Super.A.D. 1949. Automobile tires and tubes were "materials" or "supplies" within meaning of statute requiring county government's contract for furnishing of any materials or supplies to be awarded to lowest responsible bidder, so that award of contract to person other than lowest responsible bidder would be set aside. R.S. 40:25–2; R.S. 40:25–2, N.J.S.A.—*Schwartz & Nagle Tires v. Board of Chosen Freeholders of Middlesex County*, 69 A.2d 885, 6 N.J.Super. 79, certification denied 71 A.2d 681, 4 N.J. 127.—*Counties* 116.

N.J.Sup. 1922. Preparation of plans for electric light distributing system need not be awarded to lowest bidder after public advertisement; 'work,' 'materials,' 'supplies,' 'labor.' The preparation of plans and specifications for an electric light distributing system for public lighting, as authorized by sections 1 and 2 of article 24 of Laws of 1917 (P. L. p. 410), is not work or the furnishing of "materials," 'supplies,' or 'labor' which must be awarded to the lowest responsible bidder after public advertisement under the provisions of section 1 of article 11 of P. L. 1917, p. 347, as amended by P. L. 1920, p. 572.—*Franklin v. Horton*, 116 A. 176, 97 N.J.L. 25, af-

firmed 119 A. 29, 98 N.J.L. 262.—Mun Corp 330(2).

N.J.Sup. 1922. Preparation of plans for electric light distributing system need not be awarded to lowest bidder after public advertisement; 'work,' 'materials,' 'supplies,' 'labor.' The preparation of plans and specifications for an electric light distributing system for public lighting, as authorized by sections 1 and 2 of article 24 of Laws of 1917 (P. L. p. 410), is not work or the furnishing of "materials," 'supplies,' or 'labor' which must be awarded to the lowest responsible bidder after public advertisement under the provisions of section 1 of article 11 of P. L. 1917, p. 347, as amended by P. L. 1920, p. 572.—Franklin v. Horton, 116 A. 176, 97 N.J.L. 25, affirmed 119 A. 29, 98 N.J.L. 262.—Mun Corp 330(2).

N.M. 1996. Fuel, oil and oxygen that aviation center supplied to airline's plane did not qualify as "materials," under New Mexico statute which created lien in favor of anyone who stored, maintained or repaired any aircraft accessories or furnished "materials" for aircraft; term "materials" could not be interpreted as referring to supplies consumed in operation of aircraft but, by common definition, referred to component parts of aircraft. NMSA 1978, § 48-3-29.—Air Ruidoso, Ltd., Inc. v. Executive Aviation Center, Inc., 920 P.2d 1025, 122 N.M. 71, 1996-NMSC-042, rehearing denied.—Aviation 244.

N.M.App. 1994. Unpaid workers' compensation insurance premiums are neither "labor," "equipment," nor "materials," as contemplated by mechanics' and materialmen's lien statute applicable to mining claims. NMSA 1978, § 48-2-2.—CIT Group/Equipment Financing, Inc. v. Horizon Potash Corp., 884 P.2d 821, 118 N.M. 665.—Mines 112(2).

N.Y. 1914. Lien Law, Consol.Laws, c. 33, § 5, provides that a person furnishing materials to a contractor, etc., for the construction of a public improvement shall have a lien for the agreed price of such on the money of the state applicable to the construction of such improvement due on filing a notice of lien. Held, that coal sold to a state highway contractor, and used in generating steam in the boilers of road rollers and traction engines used in the fulfillment of the contract, was not "materials" furnished for the construction of the highway within such provision; and hence claimants furnishing the same were not entitled to a lien therefor.—Shultz v. C.H. Quereau Co., 104 N.E. 621, 210 N.Y. 257.

N.Y. 1912. Lien Law, Consol.Laws 1909, c. 33, § 5, giving a lien for "materials" furnished a municipal contractor, does not give a lien for rent for a steam shovel leased to a contractor; "material" meaning matter which is intended to be used in the creation of a mechanical structure, or the substance matter of which anything is made.—Troy Public Works Co. v. City of Yonkers, 100 N.E. 700, 207 N.Y. 81, 44 L.R.A.N.S. 311.

N.Y. 1905. Under Laws 1897, p. 516, c. 418, Gen.Laws, c. 49, now Lien Law, § 3, providing that

"a contractor, subcontractor, laborer, or materialman who performs labor or furnishes material for improvement of real property with the consent or at the request of the owner thereof * * * shall have a lien. * * *" A lien is authorized for dynamite furnished to and used by a subcontractor for blasting rock for the excavation and building of a roadbed of a railway, as that is included in the term "materials." Explosives used for such purpose enter into and form a part of the permanent structure, as well as the earth, rails, ties, culverts, and bridges.—Schaghticoke Powder Co. v. Greenwich & J. Ry. Co., 76 N.E. 153, 183 N.Y. 306.

N.Y.A.D. 2 Dept. 1911. "Materials," within Lien Law (Consol.Laws 1909, c. 33) § 5, giving a lien for materials furnished to a municipal contractor, means matter intended to be used in the creation of a mechanical structure; the substance of which anything is made (citing Words and Phrases Judicially Defined).—Troy Public Works Co. v. City of Yonkers, 129 N.Y.S. 920, 145 A.D. 527, affirmed 100 N.E. 700, 207 N.Y. 81, 44 L.R.A.N.S. 311.—Mun Corp 373(1).

N.Y.A.D. 2 Dept. 1911. Lien Law (Consol.Laws 1909, c. 33) § 5, giving a lien for labor or "materials" furnished a municipal contractor, does not give a lien for the charge for a steam shovel rented to a contractor.—Troy Public Works Co. v. City of Yonkers, 129 N.Y.S. 920, 145 A.D. 527, affirmed 100 N.E. 700, 207 N.Y. 81, 44 L.R.A.N.S. 311.—Mun Corp 373(2).

N.Y.A.D. 4 Dept. 1961. Cost of tires and tubes was not recoverable under a subcontractor's payment bond, as such materials did not fall within category of "materials," as defined by the Lien Law. Lien Law, § 2, subd. 12.—Norris v. Depew Paving Co., 217 N.Y.S.2d 203, 14 A.D.2d 117, motion granted 10 N.Y.2d 886, affirmed 227 N.Y.S.2d 436, 11 N.Y.2d 812, 182 N.E.2d 109.—Princ & S 63.

N.Y.Sup. 1941. Under provision of the Public Service Law applicable to the city of New York authorizing board of transportation of New York City to purchase "all necessary materials and supplies" for operation and maintenance of rapid transit system, quoted words relate to acquisition of such items as are necessary for operation and maintenance of existing "equipment" and do not include a complete substitution of equipment, since word "materials" relates to such articles only as enter into and form part of finished structure and are capable of being so used and are furnished for that purpose, while "supplies" relates to something used directly in carrying on of the work, something in addition to it, those articles necessary for enabling an existing entity to function properly, and "equipment" is the combination of all the elements necessary to carry out the project. Public Service Law, § 134½.—Smull v. Delaney, 25 N.Y.S.2d 387, 175 Misc. 795.—Urb R R 21.

N.Y.Sup. 1932. Gasoline, oil, and grease used by paving machinery held not "materials" within statute authorizing liens against fund due from city to paving contractor. Lien Law, § 5.—Butts v.

Randall, 260 N.Y.S. 713, 145 Misc. 708.—Mun Corp 373(2).

N.Y.Sup. 1932. Rental of machinery used in paving is neither “labor” nor “materials,” and is not lienable against fund due from city to paving contractor. *Lien Law*, § 5.—Butts v. Randall, 260 N.Y.S. 713, 145 Misc. 708.—Mun Corp 373(2).

N.Y.Co.Ct. 1935. “Tools” of carpenter, who was employed by contractor in construction of school building, held not within protection of contract between contractor and school district requiring contractor to insure “materials” used in construction of school building, and hence carpenter could not recover as third party beneficiary of such contract.—*Segar v. Irish*, 282 N.Y.S. 450, 156 Misc. 714.—Contracts 187(1).

N.C. 1945. The words “apparatus,” “materials,” and “equipment”, in statute providing that no town shall award contract to purchase apparatus, materials or equipment requiring expenditure of \$1,000 or more except to lowest responsible bidder after advertisement, do not include electric energy proposed to be purchased at wholesale from power company. *G.S.* § 143-129.—*Mullen v. Town of Louisville*, 33 S.E.2d 484, 225 N.C. 53.—Mun Corp 236.

N.C. 1933. “Materials” within surety bond, conditioned upon contractor paying those furnishing materials in construction of roadway, consist of articles necessary and indispensable to performance of contract, which parties must reasonably contemplate will be incorporated into the work and which lose their identity in finished product.—*Jenkins Hardware Co. v. Globe Indem. Co.*, 170 S.E. 643, 205 N.C. 185.—High 113(5).

N.C. 1933. On conflicting evidence, jury, not court, must determine whether articles are “materials” within surety bond conditioned upon contractor paying those furnishing materials in construction of roadway.—*Jenkins Hardware Co. v. Globe Indem. Co.*, 170 S.E. 643, 205 N.C. 185.—High 113(5).

N.C. 1933. Surety on bond conditioned upon contractor paying those furnishing “materials” in construction of roadway held not liable for dishes, roofing, beds, bedding, and mattresses used by contractor in operation of boarding house for employees, absent evidence that board and lodging were necessary, or part of contract of hiring, or based upon contract that contractor should deduct charges therefor from workers’ wages.—*Jenkins Hardware Co. v. Globe Indem. Co.*, 170 S.E. 643, 205 N.C. 185.—High 113(5).

N.C. 1911. Electrical appliances furnished to a light and power plant are not “materials,” within *Revisal 1905*, § 2016, giving a lien for materials furnished in the erection and repair of buildings, where none of the appliances ever became any part of the plant, and where transformers and wires supplied were merely strung on electric light poles.—*Fulp & Linville v. Kernersville Light & Power Co.*, 72 S.E. 869, 157 N.C. 154.—Mech Liens 31.

N.C. 1911. Plans and specifications drawn by an architect for the erection of a building are not “materials,” within the purview of *Revisal 1905*, § 2016, giving a mechanic’s lien upon buildings for materials furnished.—*Stephens v. Hicks*, 72 S.E. 313, 156 N.C. 239, 36 L.R.A.N.S. 354, *Am. Ann. Cas.* 1913A,272.—Mech Liens 36.

N.C.App. 1976. In private contractor’s bonds, neither equipment nor rental of equipment is considered “materials.”—*Interstate Equipment Co. v. Smith*, 229 S.E.2d 241, 31 N.C.App. 351, review allowed 232 S.E.2d 204, 291 N.C. 710, reversed 234 S.E.2d 599, 292 N.C. 592.—Princ & S 82(2).

N.C.App. 1976. “Materials” within a surety bond, conditioned upon the contractor paying those furnishing materials in the construction of a roadway, consist of articles necessary and indispensable to performance of the contract, which the parties must reasonably contemplate will be incorporated into the work and which lose their identity in the finished product.—*Interstate Equipment Co. v. Smith*, 229 S.E.2d 241, 31 N.C.App. 351, review allowed 232 S.E.2d 204, 291 N.C. 710, reversed 234 S.E.2d 599, 292 N.C. 592.—Princ & S 82(2).

Ohio 1994. Color separation negatives and chromolin proofs used in creating prototype of blister card used as packaging were not “materials” used for packages, within meaning of packaging exemption from sales tax; color separation negatives and chromolin proofs were not essential parts of the packages used to hold product. *R.C.* § 5739.02(B)(15).—*Loctite Corp. v. Tracy*, 644 N.E.2d 281, 71 Ohio St.3d 401, 1994-Ohio-210.—Tax 1243.

Ohio 1949. Where power company employed taxpayer to extract coal from company’s lands, transport it to taxpayer’s crushing plant, crush it and load crushed coal into cars for delivery for consumption at power plant for stated price per ton, there was a production by taxpayer for a consideration of “tangible personal property” for consumer who furnished the “materials” used in such production and a “transfer of possession of tangible personal property” by taxpayer to company for a consideration within sales and use tax statutes, and the equipment, machinery and supplies purchased by taxpayer and used and consumed in performing such contract were used and consumed directly in the “production of tangible personal property” for “sale” by mining so as not to be subject to such sales or use taxes. *Gen.Code*, §§ 5546-1, 5546-2, subd. 11, 5546-25.—*Terteling Bros. v. Glander*, 85 N.E.2d 379, 151 Ohio St. 236, 39 O.O. 60.—Tax 1244.1.

Ohio 1907. Under *Rev.St.* § 3208 (See *Gen. Code*, § 8345), “materials” includes such articles only as are furnished for construction of road and does not include feed for team of contractor and *Rev.St.* § 3211 (See *Gen.Code*, §§ 8351, 8352), extending section 3208, does not enlarge meaning of word “materials,” nor impose liability for articles furnished if no lien therefor be taken and perfected.—*Pennsylvania Co. v. Mehaffey*, 80 N.E. 177, 4

Ohio Law Rep. 635, 75 Ohio St. 432, 116 Am.St. Rep. 746, 9 Am. Ann. Cas. 305.—R R 159(4).

Pa. 1906. Dump cars and derricks are in the nature of tools and appliances used by a contractor for his own convenience in executing the contract and are not "materials" within the provision of a contractor's bond.—City of Philadelphia, to Use of Taylor v. Malone, 63 A. 539, 214 Pa. 90.

R.I. 1991. Lessor did not provide "materials" by leasing excavation equipment, within meaning of mechanic's lien statute. Gen. Laws 1956, § 34-28-1.—Logan Equipment Corp. v. Profile Const. Co., Inc., 585 A.2d 73.—Mech Liens 47.

R.I. 1893. The term "materials," in a mechanic's lien statute authorizing such liens for material furnished, etc., does not include loss of time for men, or delay, risk and inconvenience to contract work.—Lee v. Brayton, 26 A. 256, 18 R.I. 232.

S.C. 1951. Steel beams furnished to bridge subcontractor which were essential part of a derrick used to raise other steel beams to be fastened in place within superstructure of bridge were not "materials" and "supplies" within purview of contractor's bond and no recovery for beams could be had on the bond.—Kline v. McMeekin Const. Co., 67 S.E.2d 304, 220 S.C. 281.—Bridges 20(2.1).

S.C. 1903. There is a wide distinction between "material" and "appliance." The term "appliance" refers to machinery and all the instruments used in operating it. "Materials" include everything of which anything is made. A master must use ordinary care in instructing a servant as to the use of materials furnished and is only required to use ordinary care in furnishing materials to be manufactured.—Gallman v. Union Hardwood Mfg. Co., 43 S.E. 524, 65 S.C. 192.

S.C.App. 1989. Telephone company, which transformed electricity from alternating current to direct current to transmit human speech, was not a person engaged in rectifying "materials" and was thus not a "manufacturer" within the meaning of a property tax provision making available a reduced assessment for certain property of manufacturers. Code 1976, §§ 12-37-1310, 12-43-220.—Southern Bell Tel. & Tel. Co. v. South Carolina Tax Com'n, 377 S.E.2d 358, 297 S.C. 492, certiorari denied 380 S.E.2d 172, 298 S.C. 308.—Tax 160.

S.D. 1968. Gas and oil furnished and used in prosecution of highway construction contract constituted "materials" within coverage of contractor's bond, even though materials so furnished were not incorporated into contract work. SDC 1960 Supp. 28.1601 et seq., 28.1602, 65.0702.—State for Use and Benefit of J. D. Evans Equipment Co., Sioux Road v. Johnson, 160 N.W.2d 637, 83 S.D. 444.—High 113(5).

Tenn. 1932. Surety of state highway contractor held liable for rental of steam boiler under statutory bond for payment of labor and "materials". Pub. Acts 1917, c. 74, § 6.—Nicks v. W. C. Baird & Co., 52 S.W.2d 147, 165 Tenn. 89.—High 113(5).

Tenn. 1915. One furnishing lumber to a subcontractor for the erection of concrete culverts for use in making molds for the concrete culverts as specified in the contract, furnishes "materials" used in building the culverts, within Shannon's Code, § 3580, giving a lien on a railroad and its franchises and property for the value of material furnished in the building of its road and culverts, where the lumber was practically consumed in the work.—Cohn & Goldberg v. Walker Const. Co., 175 S.W. 536, 131 Tenn. 445.

Tenn. 1907. "Materials," as used in a statute giving a lien on the property of railroads for materials furnished in the construction of the road, does not include gasoline, gasoline torches, and coal oil used for lighting a railroad tunnel while in process of construction, packing, cotton waste, electric light supplies, carts, tools, shovels, spades, blacksmith tools, wagons, scrapers, plows, machines, machinery, derricks, derrick crabs, cables, and repairs for all these. The test is not whether the article furnished was consumed in its use, either instantly, as in case of explosives, or by degrees from long and hard use. If lien is allowed for tools and machinery, and horses and mules, for complete destruction, on the same principal it should be allowed for deterioration in value pro tanto, when not completely destroyed.—S.B. Luttrell & Co. v. Knoxville, L. & J.R. Co., 105 S.W. 565, 119 Tenn. 492, 123 Am.St. Rep. 737.

Tenn. 1904. Explosives used in blasting rock in grading and tunneling for a railroad are "materials" for which the furnisher is entitled to a lien under Acts 1883, p. 296, c. 220, as amended by Acts 1891, p. 215, c. 98.—Hercules Powder Co. v. Knoxville, L. & J.R. Co., 83 S.W. 354, 113 Tenn. 382, 106 Am.St.Rep. 836, 67 L.R.A. 487.

Tex.Civ.App.—Houston 1959. Gas and gas distillate, furnished under contract for purchase of all natural gas and gas distillate or condensate that should be produced from wells, constituted "materials" furnished, for purposes of statute authorizing recovery of attorneys' fees where there is recovery of judgment for materials furnished. Vernon's Ann.Civ.St. art. 2226.—Texas Gas Corp. v. Hankamer, 326 S.W.2d 944, ref. n.r.e.—Costs 194.36.

Tex.Civ.App. 1894. Where a lumber dealer executed a deed in trust to secure certain creditors, describing the property transferred as "all my stock of lumber of every class and kind, materials, fixtures, improvements, etc., used in connection with the business," parol evidence is admissible, in an action by the trustee against an attaching creditor, to show the character of the business and the articles of property used therein, in order to ascertain whether a stock of paints and oils were "materials," within the meaning of the trust deed.—Ellis v. Cochran, 28 S.W. 243, 8 Tex.Civ.App. 510.—Evid 460(12).

Utah App. 1989. General contractor's claim for profit that he was entitled to as investor in condominium project did not constitute an "improvement to realty," or "services" or "materials" contemplated by mechanic's lien statute. U.C.A.1953,

38-1-3.—*Daniels v. Deseret Federal Sav. & Loan Ass'n*, 771 P.2d 1100, certiorari denied 781 P.2d 878, certiorari denied 783 P.2d 53.—*Mech Liens* 35.

Vt. 1909. A contract with the United States government to furnish all labor and materials necessary for buildings at a fort provided that all materials should be subject to the acceptance or rejection of an officer in charge, and any material rejected should be at once removed and replaced by the contractor. The contractor gave bond for performance of the contract and for the prompt payment for all labor or materials supplied to him for the work, as expressly required by Act Aug. 13, 1894, c. 280, 28 Stat. 278, 40 U.S.C.A. § 270. Held, that coal furnished for use in the heating plants and in certain of the buildings for heating purposes while work of plastering, laying floors, painting, and varnishing was being done was not "materials" within the bond or the statute.—*U.S. v. U.S. Fidelity & Guaranty Co.*, 71 A. 1106, 82 Vt. 94.—*U S* 67(6).

Vt. 1903. A claim for stationery and printing is not a claim for "materials," within V.S. 3803, P.S. 4388, relating to preferred creditors.—*Bell v. St. Johnsbury & L.C.R. Co.*, 56 A. 105, 76 Vt. 42.

Va. 1945. The rentals on equipment to general contractor who was constructing sewerage system under contract with municipality, and value of missing leased equipment, were within coverage of contractor's performance bond as constituting "materials" furnished in the carrying forward, performing, or completion of the contract.—*New Amsterdam Cas. Co. v. Moretrench Corp.*, 35 S.E.2d 74, 184 Va. 318.—*Mun Corp* 347(1).

Wash. 1939. These drills are made to be used up currently. Their life is a matter of days, if not of hours. The contractor buys only his current needs on the particular job. The drills are used up in direct and immediate contact with the rock, the removal of which is the "construction of the word" and we are satisfied, by analogy to the powder cases, to regard such drills as "materials" under the statute.—*U.S. Fidelity & Guar. Co. v. Feenaughty Machinery Co.*, 85 P.2d 1085, 197 Wash. 569.

Wash. 1934. Fire alarm system contracted for by port district held "materials" within statute providing that contracts for materials should not be let by port district without ten days' advertised notice for competitive bids. RCW 53.08.120, 53.08.130, 53.2.250, 53.36.010.—*Reiter v. Chapman*, 31 P.2d 1005, 177 Wash. 392, 92 A.L.R. 828.—*Mun Corp* 236.

Wash. 1932. Oil and gasoline, furnished by claimant for machinery used to make roadbed to lumber company's land held not "materials" within statute authorizing lien on lumber company's timber land. Rem.Comp.Stat. § 1131, as amended by Laws 1929, p. 667, § 1.—*Standard Oil Co. v. Long-Bell Lumber Co.*, 6 P.2d 402, 166 Wash. 156.—*Liens* 8.

Wash. 1916. Under a contract with a city for construction work, providing that the contractor should pay for assistance of every kind employed

upon or about the work and for all materials purchased therefor, and authorizing the city to withhold payments until such assistance and materials had been paid for, meats and groceries furnished by a subcontractor who undertook to maintain a boarding house and feed the men employed by the contractor at a certain sum per week, were not within the term "and for assistance of every kind employed," as the words "assistance" and "employed" pertain to some kind of services rendered, nor within the term "materials," that term meaning something which enters into the structure subject to a lien.—*Mitchell v. Berlin-McNitt Co.*, 158 P. 264, 91 Wash. 582.

Wash. 1915. Rubber goods, consisting of hose, washers, couplings, spanners, belts, tubing, packing, gloves, boots, overcoats, furnished to a contractor erecting a public vertical lift steel bridge, are "equipment," within the rule that a contractor's bond, conditioned as required by Rem. & Bal. Code, § 1159, on the payment by the contractor for provisions and supplies for carrying on of the work, does not cover the cost of the contractor's working "equipment," and the surety is not liable therefor, since the word "equipment" imports the outfit necessary to enable the contractor to perform the agreed service, and the word "materials" includes such articles only as enter into and form a part of the finished structure.—*United States Rubber Co. of California v. Washington Engineering Co.*, 149 P. 706, 86 Wash. 180, L.R.A. 1915F,951.

Wash. 1909. The word "material," as used in a statute declaring that every person furnishing materials has a lien thereon for the same, has a well defined and understood legal significance. It is deemed to be something that goes into and becomes a part of the finished structure, such as lumber, nails, glass, hardware, and a thousand other things that might be meant, which are necessary to the completed erection of a building or structure. Webster defines the word as the substance or matter of which anything is made or may be made. The word supplied is broader than the word "materials," but it cannot by any fair construction be construed so as to include materials furnished.—*Tsutakawa v. Kumamoto*, 101 P. 869, 53 Wash. 231, modified 102 P. 766, 53 Wash. 231.

Wash.App. Div. 1 2001. Concrete cutting services that sub-subcontractor performed on public construction project were in essence labor services, and thus, sub-subcontractor was not required to provide pre-claim notice under contractor's bond statute before bringing action to recover payment for such services; sub-subcontractor did not supply "materials" to project, as any use of equipment or supplies by sub-subcontractor was purely incidental to labor of concrete drilling, sawing, and coring. West's RCWA 39.08.065.—*National Concrete Cutting, Inc. v. Northwest GM Contractors*, 27 P.3d 1239, 107 Wash.App. 657, review denied 42 P.3d 974, 145 Wash.2d 1027.—*Pub Contr* 58.

Wash.App. Div. 1 2001. For purposes of public or private materialmen's liens, "materials" are articles which either actually have been incorporated into and become a part of the building or have

been delivered on the site for incorporation into the finished structure. West's RCWA 39.08.065.—National Concrete Cutting, Inc. v. Northwest GM Contractors, 27 P.3d 1239, 107 Wash.App. 657, review denied 42 P.3d 974, 145 Wash.2d 1027.—Mech Liens 45, 47.

Wis. 1926. Coal, gasoline, kerosene, oil, and grease furnished to public sewer contractor held not within bond guaranteeing payment for "materials" furnished, so as to render surety liable therefor.—Fidelity & Deposit Co. of Maryland v. Metropolitan Sewerage Commission of Milwaukee County, 210 N.W. 713, 191 Wis. 499.—Bonds 62.

Wis. 1926. Coal, gasoline, kerosene, oil and grease held not "materials," within sewer contractor's bond.—Fidelity & Deposit Co. of Maryland v. Metropolitan Sewerage Commission of Milwaukee County, 210 N.W. 713, 191 Wis. 499.—States 101.

MATERIALS AND DEVICES

Utah App. 1992. Evidence supported finding that defendant's truck was "used for the unlawful taking or possessing of protected wildlife," within meaning of statute authorizing forfeiture of "materials and devices" used for such purposes; defendant drove truck to area of illegal trapping, and used truck to carry wildlife which had been illegally trapped and killed. U.C.A.1953, 23-13-2(23, 35), 23-20-1(2) (1991).—State v. Yates, 834 P.2d 599.—Game 10.

MATERIALS AND LABOR

Mo.App. 1930. Claim by subcontractors for hauling material by means of trucks and drivers furnished by them held not within contractor's bond for payment of "materials and labor" used in highway construction (Rev.St.1919, § 1040).—Lincoln County v. E. I. Du Pont De Nemours & Co., 32 S.W.2d 292, 224 Mo.App. 1183.—High 113(5).

MATERIALS AND SUPPLIES

C.C.A.7 (Ill.) 1940. A railroad's obligation to pay for lighting and to pay mileage for sleeping cars furnished by company manufacturing and supplying sleeping cars was an obligation to pay "car rental" and not an obligation to pay for "materials and supplies," and hence company was not entitled to priority in respect to lighting and mileage claims in railroad reorganization proceeding. Bankr.Act § 77, sub. b, 11 U.S.C.A. § 205, sub. b.—In re Chicago & N. W. R. Co., 110 F.2d 425.—Bankr 3652.

Ala. 1931. Terms "materials and supplies" in highway contractor's bond do not include articles of equipment ordinarily provided by contractor in performance of contract whether worn out on project or not. Gen.Acts 1927, p. 356 et seq.—U. S. Fidelity & Guaranty Co. v. Benson Hardware Co., 132 So. 622, 222 Ala. 429.—High 113(5).

Ala. 1930. Gasoline, oil, and lubricating outfit and other materials supplied to highway subcontractor held "materials and supplies" for which surety under original contractor's bond is liable. Acts 1927, p. 356, § 28.—State v. Southern Surety

Co., 127 So. 805, 221 Ala. 113, 70 A.L.R. 296.—High 113(5).

N.H. 1936. City councils' vote to purchase grader, truck chassis, and cement mixer for street department without participation in purchase of street commissioner, who had authority to purchase materials and supplies and to employ necessary laborers, held authorized, since expensive equipment which is convenient but not indispensable is not "materials and supplies" within statute authorizing purchase by commissioner, nor embraced in implied duty to furnish laborers with necessary tools and instrumentalities. Laws 1929, c. 329, §§ 36, 39.—Grimes v. Keenan, 187 A. 100, 88 N.H. 230.—Mun Corp 328.

MATERIALS AND SUPPLIES FOR USE IN CONSTRUCTION

Ark.App. 1982. Tools in storage shed on lot wherein owner was constructing new residence were not "materials and supplies for use in construction" as that term was used in homeowner's policy provision excluding coverage for theft from dwelling under construction or of "materials * * * for use in construction."—Allstate Ins. Co. v. Martens, 633 S.W.2d 715, 5 Ark.App. 157.—Insurance 2136(4).

MATERIALS AND WORKMANSHIP

Ala. 1929. Complaint in action for damages for breach of warranty in sale of automobile held sufficient to support default judgment; "materials and workmanship."—Ewart v. Cunningham, 122 So. 359, 219 Ala. 399.—Judgm 101(2).

MATERIALS COMMENCED TO BE FURNISHED

Ariz. 1932. "Time when labor was commenced" or "materials commenced to be furnished" within mechanics' and materialmen's lien law refers to services under contract between owner and contractor. Rev.Code 1928, § 2032, A.R.S. § 33-992.—Wylie v. Douglas Lumber Co., 8 P.2d 256, 39 Ariz. 511, 83 A.L.R. 918.—Mech Liens 198.

MATERIALS EMPLOYED AND USED

N.Y.Sup. 1941. The use of quoted words in bond guaranteeing payment of money due person supplying contractor with labor and "materials employed and used" by contractor in carrying out public improvement contract, did not extend coverage of bond to gasoline and fuel used in contractor's construction machinery and not finding permanent place in bridge, where quoted words were taken from statute which was intended to bring only such materials as were lienable within coverage of bond. State Finance Law, § 137.—Hub Oil Co. v. Jodomar, Inc., 27 N.Y.S.2d 370, 176 Misc. 320.—Bridges 20(2.1).

MATERIALS, EQUIPMENT, FACILITIES, LABOR AND SERVICES

Wis. 1934. Where subcontractor for public highway bridge gave bond conditioned on performance of agreement and payments for "materials, equipment, facilities, labor and services," surety was liable for rental of equipment, regardless of principal

contractor's obligations to highway committee and cumulative assumption of same obligations toward principal contractor by subcontractor, or principal contractor's nonliability for payments of such rentals.—Theodore J. Molzahn & Sons v. K.W. Const. Co., 254 N.W. 101, 214 Wis. 603.—Bridges 20(2.1).

MATERIALS, EQUIPMENT, TEAMS AND LABOR

Va. 1932. Claims for rental of steam shovel, steam roller, and teams, and purchase price of small tools, tents, and mattresses used by men while in camp, held claims for "materials, equipment, teams and labor" within highway contractor's bond.—Fidelity & Casualty Co. of New York v. Copenhagen Contracting Co., 165 S.E. 528, 159 Va. 126.—High 113(5).

MATERIALS FOR FINAL ERECTION

Mo.App. 1962. Lien statement which was filed by supplier of prefabricated house in order to secure the unpaid \$186.41 balance due on the house and which contained merely the \$186.41 figure, a description of materials simply as "materials for final erection", and the invoice number under which the house had been sold together with the name of model, substantially complied with requirement that lien statement contain a "just and true account" of the demand due. Section 429.080 RSMo 1959, V.A.M.S.—Wadsworth Homes, Inc. v. Woodridge Corp., 358 S.W.2d 288.—Mech Liens 149(3).

MATERIALS FOR THE WORKING AND PRESERVATION OF A MINE

Bkrtcy.D.Colo. 1981. Gravel supplied by subcontractor to operator of mines for use on roads leading to the mines constituted "materials for the working and preservation of a mine" and constituted "furnished provisions to a mine" for purposes of the mining lien statute. C.R.S.1973, 38-22-104.—In re Specialized Installers, Inc., 12 B.R. 546.—Mines 113.

MATERIALS * * * FOR USE IN CONSTRUCTION

Ark.App. 1982. Tools in storage shed on lot wherein owner was constructing new residence were not "materials and supplies for use in construction" as that term was used in homeowner's policy provision excluding coverage for theft from dwelling under construction or of "materials * * * for use in construction."—Allstate Ins. Co. v. Martens, 633 S.W.2d 715, 5 Ark.App. 157.—Insurance 2136(4).

MATERIALS FURNISHED

C.A.4 (Va.) 1976. Rental charges and value of missing rental equipment furnished to subcontractor on a public contract constituted "materials furnished" within the meaning of Virginia statute, so that where general contractor had failed to require a payment bond of subcontractor as required by statute, lessor of such equipment had a valid claim against general contractor and the surety on its payment bond for delinquent rental charges and for

value of the missing equipment. Code Va.1950, § 11-23.—R. C. Stanhope, Inc. v. Roanoke Const. Co., 539 F.2d 992.—Pub Contr 51.

E.D.Mo. 1968. Six per cent interest under Missouri law for payment to subcontractor from general contractor after payments fell due encompassed "credit extended" rather than "labor performed" or "materials furnished" and was not within scope of the Miller Act. Miller Act, §§ 1, 2, 40 U.S.C.A. §§ 270a, 270b; V.A.M.S. § 408.020.—U.S. for Use of Pittsburgh-Des Moines Steel Co. v. MacDonald Const. Co., 281 F.Supp. 1010.—U S 67(9).

D.Mont. 1965. If materials are "furnished" for prosecution of work under prime government contract the supplier is not precluded from recovering therefor by fact that items were not totally consumed in performance of the contract, and what constitutes "materials furnished" depends upon particular facts and circumstances. Miller Act, § 1 et seq., 40 U.S.C.A. § 270a et seq.—U. S. for Use and Benefit of Chemetron Corp. v. George A. Fuller Co., 250 F.Supp. 649.—U S 67(11).

La. 1946. Petition, alleging that plaintiff and defendant agreed orally that plaintiff would manage plantation and that defendant would finance farming operations and both would share equally in annual net profits, and which sought judgment for one-half value of crops and commodities produced by plantation, did not state claim for "labor performed" or "materials furnished" within exception to general venue rule. LSA-R.S. 13:3233.—Glover v. Mayer, 25 So.2d 242, 209 La. 599.—Mech Liens 259.

Md. 1986. A "building module" is not in and of itself a "building" within the mechanics' lien statute but is "materials furnished" for a building. Code, Real Property § 9-102; Code 1957, Art. 41, §§ 266EE-1 et seq., 266EE-4(b).—5500 Coastal Highway Ltd. Partnership v. Electrical Equipment Co., Inc., 505 A.2d 533, 305 Md. 532.—Mech Liens 45.

Md. 1947. Gasoline and oil used in trucks for hauling materials were not "materials furnished" within meaning of mechanics' lien law but a lien was allowable for their cost as "debts contracted" for work done for or about the building. Code Supp.1943, art. 63, § 1.—House v. Fissell, 51 A.2d 669, 188 Md. 160.—Mech Liens 48, 50.

Pa. 1942. Payment of premiums for policies covering workmen's compensation, public liability and property damage, and contractor's contingent public liability and property damage insurance delivered by construction company to city in pursuance of contract to do repaving work, did not fall within the obligation of a labor and materialmen's bond furnished by company conditioned on payment of "labor performed," "services rendered," and "materials furnished" in prosecution of the work.—City of Pittsburgh, to Use of H. M. Kamin Agency v. Parkview Const. Co., 23 A.2d 847, 344 Pa. 126.—Mun Corp 347(1).

Pa.Super. 1993. Subcontractor which supplied precast concrete barriers to contractor for Pennsyl-

vania Department of Transportation (PennDOT) highway construction project could recover on contractor's bond as barriers were "materials furnished" which were reasonably expected to be substantially used up on project and be of no value after completion and sale of barriers was intended at time contract was effected; barriers were made specifically according to PennDOT requirements and were indispensable to prosecution of project. 8 P.S. § 195.—Dox Planks of Northeastern Pennsylvania, a Div. of Romani Industries v. Ohio Farmers Ins. Co., 621 A.2d 132, 423 Pa.Super. 311, appeal denied 637 A.2d 284, 536 Pa. 624, appeal denied 637 A.2d 284, 536 Pa. 624.—High 113(5).

S.C. 1990. Rental charges for leased equipment when operators are not supplied by lessor do not constitute debts for "labor performed," or "materials furnished," within meaning of mechanic's lien statute. Code 1976, § 29-5-10.—Hardin Const. Group, Inc. v. Carlisle Const. Co., 388 S.E.2d 794, 300 S.C. 456.—Mech Liens 47.

Tex. 1970. Materials used by drilling company in performance of its contract with oil company to drill oil and gas well were not "materials furnished" to oil company within meaning of statute authorizing recovery of attorney's fees by any person having valid claim for materials furnished and thus did not furnish basis for recovery of attorney's fee by drilling company in successful suit against oil company for breach of contract. Vernon's Ann.Civ.St. art. 2226.—Tenneco Oil Co. v. Padre Drilling Co., 453 S.W.2d 814.—Costs 194.32.

Tex.Com.App. 1941. Under statutes granting materialmen a lien for materials furnished, the phrase "materials furnished" did not require materialman asserting lien to establish that materials actually entered into the construction, and therefore, upon materialman asserting lien for materials furnished to subcontractor, there was no issue of removed materials. Vernon's Tex.Civ.St.1936, arts. 5452, 5453.—W. L. MacAtee & Sons v. House, 153 S.W.2d 460, 137 Tex. 259.—Mech Liens 48.

Tex.Civ.App.—Waco 1971. Where contract between film company and corporation provided that film company would provide professional services in the production of motion picture training film for corporation and that the film company would sell and deliver color prints of the film mounted on reels and packaged for specific price, the prints were not "materials furnished" so as to entitle film company to recover attorneys fees in suit to recover balance allegedly due on the contract. Vernon's Ann.Civ.St. art. 2226.—Success Motivation Institute, Inc. v. Jamieson Film Co., 473 S.W.2d 275.—Costs 194.32.

MATERIAL SIGNATURE

C.A.10 (Colo.) 1972. Initials on money orders in blanks calling for "initial of issuing employee" constituted a "signature" for purposes of "material signature" element of offense of passing, with intent to defraud, forged or altered Post Office Department money orders with knowledge of material signatures thereon to be false, forged and counter-

feited. 18 U.S.C.A. § 500.—U.S. v. Tasher, 453 F.2d 244.—Forg 8.

MATERIALS IN PROSECUTION OF WORK PROVIDED FOR IN CONTRACT

C.C.A.8 (Ark.) 1932. Provisions furnished government contractor and subcontractor for feeding laborers, where location of work rendered furnishing of board necessary, held "materials in prosecution of work provided for in contract" within statute giving materialmen action on bonds. 40 U.S.C.A. § 270.—Equitable Cas. & Sur. Co. v. Helena Wholesale Grocery Co., 60 F.2d 380.—U S 67(11).

MATERIALS, MACHINERY AND APPLIANCES

Tex.Civ.App.—San Antonio 1940. Under oil well drilling contract, obligating driller upon completion or abandonment of well to remove at his own risk and expense all "materials, machinery and appliances" furnished by him, the drill, pipes, etc., used to make up drill stem were included in the terms "materials, machinery and appliances", and hence failure of driller to remove broken drill stem from well because cost would be greater than drill stem was worth was a breach of contract.—Sawyer v. Dixon, 143 S.W.2d 987, writ dismissed, correct.—Mines 109.

MATERIALS, MACHINERY, EQUIPMENT AND LABOR

W.Va. 1933. Surety on highway contractor's bond securing claims for "materials, machinery, equipment and labor" held not liable for purchase price or rental of anything, such as tractor, which should be part of contractor's regular equipment (Code 1923, c. 75, § 12).—Rhodes v. Riley, 169 S.E. 525, 113 W.Va. 679.—High 113(5).

MATERIALS OF INSTRUCTION

Md. 1968. Words "materials of instruction", in statute providing for purchasing, inter alia, of textbooks. Materials of instruction and school supplies by school boards have a limited construction and mean "materials of instruction" like stationery and school supplies, having relatively short useful life and often consumed during a school year. Code 1957, art. 77, § 146.—Mitchell Business Equipment Co. v. Board of Ed. for St. Mary's County, 246 A.2d 256, 251 Md. 150.—Schools 75.

MATERIALS OR SUPPLIES

N.J.Sup. 1948. A contract for motor truck chassis was a contract for "apparatus" and not contract for "materials or supplies" within statute requiring municipality to award contract for materials or supplies to lowest responsible bidder. N.J.S.A. 40:50-1.—Solomon v. City of Newark, 59 A.2d 386, 137 N.J.L. 247.—Mun Corp 236.

N.J.Sup. 1939. The furnishing of "apparatus" is not the furnishing of "materials or supplies" to city, within statute requiring contract for furnishing of materials and supplies to be awarded to lowest bidder where sum to be expended exceeds \$1,000. N.J.S.A. 40:50-1.—Peter's Garage v. City of Bur-

lington, 3 A.2d 634, 121 N.J.L. 523, affirmed *Balinger v. City of Burlington*, 8 A.2d 579, 123 N.J.L. 227, affirmed 8 A.2d 910, 123 N.J.L. 227.—*Mun Corp* 241.

MATERIALS OR SUPPLIES FOR USE IN MACHINES

La. 1931. Under statute making highway contractor's surety liable for "materials or supplies for use in machines" surety on road contractor's bond held not liable for labor and material used in repairing contractor's trucks "in" meaning on inside of machine and not "on" (Act No. 224 of 1918, as amended by Act 271 of 1926).—*Rester v. Moody & Stewart*, 134 So. 690, 172 La. 510.—High 113(5).

La.App. 1 Cir. 1930. Under statute making highway contractors' surety liable for "materials or supplies for use in machines," surety held liable for parts, tires, and grease for trucks (Act No. 224 of 1918, §§ 1, 2, as amended by Act No. 271 of 1926, §§ 2, 3).—*Rester v. Moody & Stewart*, 130 So. 254, 16 La.App. 177, reversed 134 So. 690, 172 La. 510.—High 113(5).

MATERIALS PREPARED FOR LITIGATION

N.Y.A.D. 3 Dept. 1992. Videotapes resulting from surveillance of personal injury plaintiff, conducted at request of defense counsel after action was commenced, were not discoverable upon demand, since tapes were "materials prepared for litigation" within meaning of statute excepting materials prepared for litigation from general policy favoring full disclosure. *McKinney's CPLR* 3101(d), par. 2.—*Careccia v. Enstrom*, 578 N.Y.S.2d 678, 174 A.D.2d 48.—*Pretrial Proc* 383.

MATERIALS PREPARED IN ANTICIPATION OF LITIGATION

Ala. 1982. Documents which were in hands of insurer in connection with claim by insureds under a homeowners policy and which consisted of a report to insurer from its claims representative, a memo from that representative to his superior, and a combined file report from that representative were "materials prepared in anticipation of litigation" and, in absence of a showing of substantial need, were not discoverable. *Rules Civ.Proc.*, Rules 26(b)(3), 34.—*Ex parte Bozeman*, 420 So.2d 89.—*Pretrial Proc* 381.

MATERIALS PRODUCED IN THE BENEFICIARY DEVELOPING COUNTRY

C.A.Fed. 1989. Value of United States-grown corn would not be counted toward 35% value added requirement so as to entitle flour products, produced in Mexico from that corn and imported into United States, to duty-free status; claimed intermediate products did not qualify as "materials produced in the beneficiary developing country" as they were not substantially transformed into a new and different "article of commerce." *Trade Act of 1974*, § 503(b)(2)(A), 19 U.S.C.A. § 2463(b)(2)(A).—*Azteca Mill. Co. v. U.S.*, 890 F.2d 1150, rehearing denied.—*Cust Dut* 38(9).

MATERIALS PURCHASED

Ct.Cl. 1940. Where government contracting agent, soliciting bids for canvas cots, and bidder, understood that bid was not to include any amount for processing taxes, but that such taxes would be added to contract price under clause providing that prices included federal taxes previously imposed which were applicable to the "material purchased" but that, if certain taxes were thereafter levied, and were paid by the contractor on the "articles" or "supplies," such taxes should be paid to the contractor by the government, contractor was entitled to recover processing taxes imposed, after bid was made, on canvas covering and straps, for, while strictly the "materials purchased" and the "articles" or "supplies" were the cots, they included the canvas covering and straps. *Agricultural Adjustment Act*, § 9(a), 48 Stat. 35, 7 U.S.C.A. § 609.—*Telescope Folding Furniture Co. v. U.S.*, 31 F.Supp. 780, 90 Ct.Cl. 635.—U S 70(33).

MATERIALS SUPPLIED

Fla.App. 4 Dist. 1993. "Materials supplied," as used in contractor's statutory warranty as to fitness of work performed or materials supplied, does not include manufactured personal property covered by developer's warranty of merchantability and fitness for intended purpose; thus, contractor does not guarantee operating efficiency or design of items such as air conditioners. *West's F.S.A.* §§ 718.203, 718.203(2).—*Frank J. Rooney, Inc. v. Leisure Resorts, Inc.*, 624 So.2d 773, review granted 639 So.2d 979, decision approved in part, quashed in part 654 So.2d 911, on remand 666 So.2d 1053, on remand 683 So.2d 509.—*Contracts* 205.40.

S.C.App. 1992. Processing of quality control label by subcontractor was not "labor performed" or "materials supplied" within meaning of statute requiring subcontractor to bring action on payment bond within 90 days after it last performed labor or supplied material on job it contracted to perform. *Code 1976*, §§ 11-35-3030, 11-35-3030(2)(c).—*Quality Lightning Protection, Inc. v. H.C. Brown Const. Co., Inc.*, 427 S.E.2d 676, 311 S.C. 62, rehearing denied.—*Lim of Act* 47(3).

MATERIALS, SUPPLIES OR EQUIPMENT

Minn. 1986. Scoreboard system agreement whereby manufacturer, in return for supplying a scoreboard system for the Metrodome, was given right to sell or lease advertising on scoreboard to advertisers on an exclusive basis for each product category was not a contract for "materials, supplies or equipment" [M.S.A. § 473.556, subd. 7] and, hence, was not a contract as to which public bidding procedures [M.S.A. § 471.345] were required to be followed by the Metropolitan Sports Facilities Commission.—*Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Com'n*, 381 N.W.2d 842, answer to certified question conformed to 797 F.2d 552, certiorari denied 107 S.Ct. 576, 479 U.S. 986, 93 L.Ed.2d 579.—*Mun Corp* 236.

MATERIALS, SUPPLIES, TOOLS, APPLIANCES, AND LABOR

S.D. 1943. The payments for repairs on tires furnished for trucks used in hauling crushed rock in construction of highway were within provisions of highway contract bond securing claims for "materials, supplies, tools, appliances, and labor" in carrying out provisions of highway construction contract.—*Margulies v. Ogdie*, 10 N.W.2d 513, 69 S.D. 352.—High 113(5).

S.D. 1943. Generally, an item is within coverage of a highway contract bond securing claims for "materials, supplies, tools, appliances, and labor" in carrying out provisions of highway construction contract, if it is such that cost accountant would charge it as a direct expense item to a particular job and not to plant and equipment.—*Margulies v. Ogdie*, 10 N.W.2d 513, 69 S.D. 352.—High 113(5).

MATERIAL STAGE

Fla.App. 1 Dist. 1995. Sentencing is "material stage" of criminal proceeding for purposes of rule governing procedure for raising defendant's incompetency to proceed. West's F.S.A. RCrP Rules 3.210(b), 3.214.—*Calloway v. State*, 651 So.2d 752.—Sent & Pun 250.

N.Y. 1996. Defendant has statutory right to be present during sidebar questioning of prospective jurors on matters of bias or prejudice; such questioning constitutes "material stage" of trial. McKinney's CPL § 260.20.—*People v. Vargas*, 645 N.Y.S.2d 759, 88 N.Y.2d 363, 668 N.E.2d 879.—Crim Law 636(3).

N.Y. 1996. Trial court's decision to explore founded and credible fears of prospective juror about appearing as juror in case, at private conference at which only judge, prospective juror and court reporter were present, did not violate defendant's right to be present during "material stages" of trial, where conference took place before any juror examinations had even begun and before any juror had been sworn; conference was not "material stage" of defendant's trial. McKinney's CPL § 260.20.—*People v. Vargas*, 645 N.Y.S.2d 759, 88 N.Y.2d 363, 668 N.E.2d 879.—Crim Law 636(3).

N.Y.A.D. 4 Dept. 1996. Questioning of prospective jurors during impanelling of jury may constitute "material stage" of trial, at which defendant has fundamental right to be present.—*People v. Tolliver*, 638 N.Y.S.2d 268, 224 A.D.2d 924, appeal denied 645 N.Y.S.2d 461, 88 N.Y.2d 886, 668 N.E.2d 432.—Crim Law 636(3).

N.Y.A.D. 4 Dept. 1994. In determining whether particular proceeding is "material stage" of trial at which defendant's presence is required, key factor is whether proceeding involved factual matters about which defendant might have peculiar knowledge that would be useful in countering People's position.—*People v. Spotford*, 609 N.Y.S.2d 497, 196 A.D.2d 179, reargument denied 1994 WL 231676, appeal granted 614 N.Y.S.2d 397, 83 N.Y.2d 915, 637 N.E.2d 288, reversed 627 N.Y.S.2d 295, 85 N.Y.2d 593, 650 N.E.2d 1296, on remand

629 N.Y.S.2d 601, 217 A.D.2d 901.—Crim Law 636(1).

N.Y.A.D. 4 Dept. 1993. In camera questioning of seated juror for possible disqualification is not a "material stage" of trial at which defendant has fundamental right to be present; however, better practice is to conduct voir dire in defendant's presence. McKinney's CPL §§ 260.20, 270.15, subd. 3; U.S.C.A. Const.Amend. 6.—*People v. Johnson*, 596 N.Y.S.2d 255, 189 A.D.2d 318.—Crim Law 636(3).

MATERIAL STAGE OF THE TRIAL

N.Y.A.D. 2 Dept. 1992. In camera questioning of sworn juror regarding possible presence at arrest scene was not "material stage of the trial," and, thus, presence of defense counsel without defendant at the inquiry sufficiently safeguarded defendant's due process right to fair and just hearing. U.S.C.A. Const.Amend. 5, 14.—*People v. Christenson*, 591 N.Y.S.2d 507, 188 A.D.2d 659, leave to appeal denied 598 N.Y.S.2d 770, 81 N.Y.2d 968, 615 N.E.2d 227.—Const Law 268(6); Crim Law 636(1).

N.Y.A.D. 2 Dept. 1992. Court officer's act of telling jurors at court's direction that they were sequestered for evening and should not resume deliberations until return to jury room on following morning was not "material stage of the trial" requiring defendant's presence.—*People v. Marchese*, 586 N.Y.S.2d 1020, 185 A.D.2d 899, leave to appeal denied 594 N.Y.S.2d 726, 81 N.Y.2d 764, 610 N.E.2d 399, habeas corpus denied *Marchese v. Senkowski*, 1999 WL 731011.—Crim Law 636(1).

MATERIAL STAGE OF TRIAL

W.D.N.Y. 1995. In camera hearing was not "material stage of trial," for purposes of determining whether defendant had a right to be present, where witness initiated meeting with court to discuss how to alleviate her previous incorrect testimony which resulted from her misunderstanding of the questions propounded, neither party was present, and defendant cross-examined witness when she was recalled to the stand.—*Pawlowski v. Kelly*, 932 F.Supp. 475.—Crim Law 636(3).

N.Y. 1992. *Sandoval* hearing was "material stage of trial" at which presence of defendant charged with narcotics offenses was required, where hearing involved seven prior charges dating back approximately ten years; defendant's presence would not have been useless, or the benefit but a shadow. McKinney's CPL § 260.20.—*People v. Dokes*, 584 N.Y.S.2d 761, 79 N.Y.2d 656, 595 N.E.2d 836.—Crim Law 636(3).

MATERIAL STAGES

N.Y.A.D. 1 Dept. 1993. Defendant's right to be present at all "material stages" of his trial was not compromised by his absence during brief conference, at which prosecutor and defense counsel were present, when juror informed court that her aunt was undergoing cancer surgery and that she was uncertain whether she would be good in court, after which juror was excused without objection.—*People*

v. Robustelli, 592 N.Y.S.2d 704, 189 A.D.2d 668, leave to appeal denied 598 N.Y.S.2d 777, 81 N.Y.2d 975, 615 N.E.2d 234.—Crim Law 636(2).

N.Y.A.D. 3 Dept. 1993. Conferences between attorneys and court involving matters of law and procedure were not “material stages” of trial at which defendant had right to be present. U.S.C.A. Const.Amend. 6.—People v. Haley, 600 N.Y.S.2d 842, 195 A.D.2d 873, appeal denied 610 N.Y.S.2d 163, 82 N.Y.2d 896, 632 N.E.2d 473.—Crim Law 636(1).

N.Y.A.D. 4 Dept. 1993. Defendant has fundamental right to be present at all “material stages” of trial, including impaneling of jury, introduction of evidence, counsel’s summations, and court’s charge. McKinney’s CPL §§ 260.20, 270.15, subd. 3; U.S.C.A. Const.Amend. 6.—People v. Johnson, 596 N.Y.S.2d 255, 189 A.D.2d 318.—Crim Law 636(3), 636(4), 636(6), 636(7).

MATERIAL STAGES OF THE TRIAL

N.Y.A.D. 2 Dept. 1996. —Sidebar conferences concerning prospective jurors’ disqualification for cause were not “material stages of the trial” and, thus, defendant had no right to be present at conferences; whether to disqualify prospective jurors who manifested inability to render impartial verdict or to adequately communicate in English Language was decision for trial court after hearing argument by counsel. McKinney’s CPL § 270.20.—People v. Davis, 642 N.Y.S.2d 59, 227 A.D.2d 414, appeal denied 649 N.Y.S.2d 390, 88 N.Y.2d 983, 672 N.E.2d 616.—Crim Law 636(3).

MATERIAL STATEMENT

C.A.9 (Cal.) 1998. Government contractor’s misrepresentation to United States Defense Commissary Agency (DeCA) to effect that it had not shared prices with competing bidder for contract had natural tendency to influence decision of federal agency and was therefore “material statement” within scope of offense of making false statement to federal agency, whether or not particular act of price sharing had been improper; contracting officer relied upon statement in deciding to terminate agency’s inquiry into allegations of wrongdoing. 18 U.S.C.A. § 1001.—U.S. v. Service Deli Inc., 151 F.3d 938.—Fraud 68.10(4).

C.A.1 (Mass.) 1996. “Material statement” as used in statute prohibiting false subscription of tax returns is statement having natural tendency to influence, or is capable of influencing decision of decisionmaking body to which it was addressed. 26 U.S.C.A. § 7206(1).—U.S. v. DiRico, 78 F.3d 732.—Int Rev 5263.30.

C.A.9 (Or.) 1968. A statement is a “material statement” within meaning of statute providing that whoever, in any matter within jurisdiction of any agency of United States knowingly makes any false “statements” is subject to certain punishment, if it could affect or influence exercise of a governmental function. 18 U.S.C.A. § 1001.—Tzantarmas v. U.S., 402 F.2d 163, certiorari denied 89 S.Ct. 1312, 394 U.S. 966, 22 L.Ed.2d 569.—Fraud 68.10(4).

C.A.5 (Tex.) 1993. For purposes of crime of knowingly and willfully misrepresenting material fact in matter within jurisdiction of department or agency of United States, “material statement” is one that has natural tendency to influence or one that is capable of affecting or influencing government function; actual influence or reliance by government agency is not required, inasmuch as statement may still be material even if it is ignored or never read by agency receiving the statement. 18 U.S.C.A. § 1001.—U.S. v. Puente, 982 F.2d 156, certiorari denied 113 S.Ct. 2934, 508 U.S. 962, 124 L.Ed.2d 684.—Fraud 68.10(4).

Mo.App. E.D. 1996. For purposes of statute proscribing knowingly making false or fraudulent “material statement” to obtain workers’ compensation benefits, statements made by workers’ compensation claimant about her health and physical capabilities are material because they comprise essence of claim for benefits, and, when made to claims adjuster for employer’s insurance carrier, statements may induce detrimental reliance because adjuster’s report will often form basis for insurer’s decision to pay or contest claim. V.A.M.S. § 287.128, subd. 1(8).—State v. Birkemeier, 927 S.W.2d 503, rehearing, transfer denied, and transfer denied.—Work Comp 2080.

Tex.Crim.App. 1938. A constable’s testimony that he had not stated before the grand jury that he had not called on defendant, who was indicted for assault with a pistol, to assist him in quelling a disturbance of the peace, was a “material statement” on which a charge of perjury could be based, alleging falsity of the testimony. Vernon’s Ann. P.C. arts. 348, 484; Vernon’s Ann.C.C.P. art. 39; Vernon’s Ann.Civ.St. art. 6886.—Polke v. State, 118 S.W.2d 793, 134 Tex.Crim. 496.—Perj 11(7).

MATERIAL STATEMENTS

C.A.7 (Ill.) 1998. “Material statements,” for purposes of perjury statute, are those that have a natural tendency to influence, or are capable of influencing, the decision of the decisionmaking body to which it was addressed. 18 U.S.C.A. § 1623(a).—U.S. v. Akram, 152 F.3d 698.—Perj 11(2).

S.D. 1939. A warranty of a material representation constitutes a “material warranty,” and warranted statements in clearance certificates executed by bank in applying for renewal of fidelity bond that accounts of assistant cashier had been examined and found correct, and that all moneys had been accounted for, were “material statements.” Rev. Code 1919, §§ 1391, 1407.—Federal Deposit Ins. Corp. of Washington, D.C. v. Western Sur. Co., 285 N.W. 909, 66 S.D. 503.—Insurance 2999.

MATERIALS TO BE USED OR CONSUMED

Cal.App. 2 Dist. 1919. Where the nature of the concrete work contracted for is such as to require the use of forms to hold it in place while hardening, and the materials from which the forms are made are consumed in the process, such material comes within the definition of “materials to be used or consumed” in the construction of a building as

contained in Code Civ.Proc. § 1183, and a mechanic's lien may be had on the structure therefor.—Consolidated Lumber Co. v. Bosworth, 180 P. 60, 40 Cal.App. 80.—Mech Liens 47.

MATERIAL SUPPLIED

W.D.Pa. 1964. Equipment which materialman was required to furnish for installation of other material and which was to be paid for so long as it was required constituted "material supplied" under Miller Act within provision requiring supplier to a subcontractor to give written notice of any claim for materials furnished by subcontractor within 90 days from date on which materials were last supplied. Miller Act, § 2, 40 U.S.C.A. § 270b.—U. S. to Use of Betts v. Continental Cas. Co., 230 F.Supp. 557.—U S 67(13).

Tex.Civ.App.—Fort Worth 1960. Road machinery leased to subcontractor for use on highway project was not "material supplied" within public contractors' bond statute. Vernon's Ann.Civ.St. art. 5160.—Trinity Road & Bridge Co. v. Watson, 341 S.W.2d 956, ref. n.r.e.—High 113(5).

MATERIAL SUPPLIER

M.D.Pa. 1979. A party who supplies fungible goods which are part of his general inventory, and the production of which does not require a specialized or customized manufacturing process in order to meet specifications of prime contract is generally a "material supplier" rather than a "subcontractor" for purposes of the Miller Act; however, if item is to be custom manufactured by purported subcontractor according to specifications found in prime contract and purported subcontractor bears portion of responsibility for design and fabrication of goods, then it is likely that relationship between prime contractor and purported subcontractor is sufficient to justify recovery by the latter's material suppliers under the Miller Act. Miller Act, §§ 1, 2(a), 40 U.S.C.A. §§ 270a, 270b(a).—U. S. for Use and Benefit of Parker-Hannifin Corp. v. Lane Const. Corp., 477 F.Supp. 400.—U S 67(6).

MATERIALS USED

Ark. 1927. Gas used directly in operating oil drill held to be "materials used" in drilling well, within meaning of lien statute. Acts 1923, p. 500, § 1.—Crown Central Petroleum Corp. v. Frick-Reid Supply Co., 293 S.W. 1012, 173 Ark. 983.—Mines 112(2).

Ky. 1934. Clause in contractor's bond assuring payment for "materials used" covers material which has gone into finished structure and has become a part of it, and material which was almost consumed, wasted or destroyed in the work, although it was not incorporated in improvement as constituent part of it.—Marion Steam Shovel Co. v. Union Indemnity Co., 75 S.W.2d 541, 255 Ky. 817.—Mun Contr 347(1); Pub Contr 50.

MATERIALS USED IN CONSTRUCTION OF HIGHWAY

La.App. 2 Cir. 1930. Dry goods, groceries, axes, wheelbarrow, and harness held not "materials used in construction of highway," and therefore insufficient as basis for lien. Act No. 224 of 1918; Act No. 203 of 1924; Act No. 271 of 1926.—Perry v. J.M. Lewis & Co., 129 So. 406, 14 La.App. 90.—High 113(4).

MATERIALS USED IN CONSTRUCTION OF PUBLIC WORK

N.D.Cal. 1933. Claims for tires and tubes used and worn out in operation of trucks on government dam project held allowable in action on contractor's bond, as claim for "materials used in construction of public work." 40 U.S.C.A. § 270.—U.S., for use of U.S. Rubber Co., v. Ambursen Dam Co., 3 F.Supp. 548.—U S 67(11).

N.D.Cal. 1933. Claims for gas, oil, coal, etc., for generating power used in prosecution of government project, and for explosives so used, held allowable in action on contractor's bond as for "materials used in construction of public work." 40 U.S.C.A. § 270.—U.S., for use of U.S. Rubber Co., v. Ambursen Dam Co., 3 F.Supp. 548.—U S 67(11).

N.D.Cal. 1933. Claim for rent of machinery used in construction of public work is allowable within government contractor's bond as claim for "materials used in construction of public work." 40 U.S.C.A. § 270.—U.S., for use of U.S. Rubber Co., v. Ambursen Dam Co., 3 F.Supp. 548.—U S 67(11).

N.D.Cal. 1933. Claims for incidental repairs representing ordinary wear and tear of machinery used in prosecution of government project are within contractor's bond, as "materials used in construction of public work." 40 U.S.C.A. § 270.—U.S., for use of U.S. Rubber Co., v. Ambursen Dam Co., 3 F.Supp. 548.—U S 67(8).

MATERIALS USED IN THE PREPARATION OF HUMAN BODIES FOR BURIAL

Miss. 1962. Supplies and equipment, including such items as lowering devices, folding chairs, grave markers, register books and stamps, flower racks, tents, drapes, signs, lamps, and other products not finding their way to the grave or utilized in embalming room, were not "materials used in the preparation of human bodies for burial" within statute exempting such materials from sales taxation. Code 1942, §§ 9696–192, 10116(f) (4).—Monaghan v. Jackson Casket Co., 136 So.2d 603, 242 Miss. 840.—Tax 1241.1.

MATERIALS, * * * USED OR CONSUMED IN * * * INDUSTRIAL PRODUCTION OF PERSONAL PROPERTY

Minn. 1979. Purchase of right to use transparencies furnished by photographers and paintings provided by artists in manufacture of decorative playing cards, calendars, and other advertising specialties was exempt from the use or sales tax under statute excluding "materials, * * * used or consumed in * * * industrial production of

personal property” intended to be sold ultimately in retail. M.S.A. § 297A.25, subd. 1(h).—Standard Packaging Corp. v. Commissioner of Revenue, 288 N.W.2d 234.—Tax 1245.

MATERIAL TERM

C.A.6 (Tenn.) 1988. Manner in which payments were to be made—whether by regular or certified check—was not “material term” on which parties had to agree before they could enter into binding settlement of Fair Labor Standards Act action. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C.A. § 201 et seq.—Brock v. Scheuner Corp., 841 F.2d 151, 28 Wage & Hour Cas. (BNA) 893.—Labor 1298.

D.Md. 1994. Even if grants by Environmental Protection Agency (EPA) to city for construction of sewerage facilities were bilateral contract, city’s two-year delay from scheduled completion date was breach of “material term” of contract, entitling EPA to choose restitution as remedy, including reimbursement of funds already given to grantee, under contract law. Federal Water Pollution Control Act Amendments of 1972, § 201 et seq., as amended, 33 U.S.C.A. § 1281 et seq.—Mayor and City Council of Baltimore v. Browner, 866 F.Supp. 249.—Environ Law 180.

S.D.N.Y. 1996. “Material term” of credit card agreements between bank and its potential customers was not interchangeable with “credit term,” which bank was required to disclose to customers under Truth in Lending Act (TILA); thus, fact that companion airplane ticket used by bank to induce customer to enter into credit card agreement was intended to be material term of bank’s credit agreements with its potential customers did not require bank to disclose conditions and restrictions on companion ticket as part of credit transaction. Truth in Lending Act, § 102(a), 15 U.S.C.A. § 1601(a).—Miller v. European American Bank, 921 F.Supp. 1162.—Cons Cred 51.

Bkrtcy.E.D.N.Y. 1994. Under New York law, “material term” is any term properly bearing upon subject matter of contract.—In re Windsor Plumbing Supply Co., Inc., 170 B.R. 503.—Contracts 9(1).

Ill.App. 2 Dist. 1989. Settlement agreement may not generally be altered as to material terms without consent of both parties, nor may court on its own motion or accord alter such agreed order; “material term” is one which has legal effect different from original language of agreement.—Exchange Nat. Bank of Chicago v. Sampson, 134 Ill.Dec. 796, 542 N.E.2d 1303, 186 Ill.App.3d 969.—Compromise 18(1).

MATERIAL TERMS

C.A.5 1991. “Material terms” of proposed settlement of whistle-blower action, which Secretary of Labor cannot unilaterally modify consistent with requirements of Energy Reorganization Act, are those which parties could not customarily change in absence of consent of other parties to settlement agreement. Energy Reorganization Act of 1974, § 210, as amended, 42 U.S.C.A. § 5851.—Macktal

v. Secretary of Labor, 923 F.2d 1150, rehearing denied, appeal after remand 171 F.3d 323.—Labor 26.5.

D.C. 2001. In order to be enforceable, a contract must be sufficiently definite as to its “material terms,” which include, e.g., subject matter, price, payment terms, quantity, and duration, so that the promises and performance to be rendered by each party are reasonably certain.—Affordable Elegance Travel, Inc. v. Worldspan, L.P., 774 A.2d 320.—Contracts 9(1).

D.C. 2001. Ambiguity regarding which travel agency had signed, as lessee, the lease of an automated computer airline reservation and ticketing system involved the identity of one of the parties to the lease rather than the “material terms” of the lease, and thus, the presumption that an ambiguity should be construed against the drafter was inapplicable.—Affordable Elegance Travel, Inc. v. Worldspan, L.P., 774 A.2d 320.—Bailm 1.

MATERIAL TESTIMONY

C.A.8 (Minn.) 2001. “Material testimony,” which can be compelled by compulsory process, is testimony that might affect the outcome of the trial. U.S.C.A. Const.Amend. 6.—U.S. v. Luvene, 245 F.3d 651.—Witn 2(1).

Cal.Super. 1939. The testimony which motorist might give by deposition in action against her by bicyclist for personal injuries would be “material testimony,” and motorist could not avoid forfeiture for noncompliance with subpoena requiring attendance for taking of deposition on ground that it was not shown that she could give “material testimony.” West’s Ann.Code Civ.Proc. §§ 1992, 2021, subd. 1.—Church v. Payne, 92 P.2d 406, 35 Cal.App.2d Supp. 752.—Witn 22.

N.Y.Sup. 1932. Testimony is deemed “material testimony,” falsity of which warrants conviction of perjury, if it might have substantially influenced jury’s consideration of merits or credibility of witness’ other material testimony.—People v. Kresel, 264 N.Y.S. 464, 147 Misc. 241.—Perj 11(8).

Utah 1985. “Material testimony” is testimony which would with reasonable probability affect outcome of trial; defendant is required to make plausible showing that testimony of absent witness would have been both material and favorable to defense in order to prove violation of constitutional right to compulsory process. U.S.C.A. Const. Amend. 6.—State v. Schreuder, 712 P.2d 264.—Witn 2(1).

MATERIAL TO A FACT AT ISSUE

Tex.App.—Dallas 1985. The “material to a fact at issue” standard in section 22.065(a) of the Penal Code governing admissibility of evidence of a complainant’s sexual history evinces a legislative intent to exclude, in most instances, evidence of a victim’s prior sexual conduct when it is only marginally relevant to the issue of consent and there is no identity of persons and similarity of circumstances. V.T.C.A., Penal Code § 22.065(a).—Williams v.

State, 690 S.W.2d 656, petition for discretionary review granted, reversed 719 S.W.2d 573.—Rape 40(2).

MATERIAL TO GUILT OR INNOCENCE

Wash.App. Div. 1 1981. In order for evidence to be "material to guilt or innocence" within recognized test that to bring a claim within due process clause protection defendant must show that lost evidence was material to guilt or innocence and favorable to the defendant, it must be necessary for a prima facie defense and do more than supply circumstantial evidence of innocence. U.S.C.A.Const. Amend. 14.—State v. Gerber, 622 P.2d 888, 28 Wash.App. 214, review denied 95 Wash.2d 1021.—Const Law 268(5).

MATERIAL TO HAZARD ASSUMED

App.D.C. 1943. A misstatement in application for life policy to be "material to hazard assumed" within statute regarding effect of misstatements in application must be shown in some way to have affected the hazard assumed or contributed to the loss in a substantial manner. D.C.Code 1940, § 35-414.—Prudential Ins. Co. of America v. Saxe, 134 F.2d 16, 77 U.S.App.D.C. 144, certiorari denied 63 S.Ct. 1033, 319 U.S. 745, 87 L.Ed. 1701.—Insurance 3001.

MATERIAL TO INDICTMENT

N.M.App. 1977. Defendant has due process right of not being indicted on basis of false evidence, known to and uncorrected by prosecutor, if false evidence is "material to indictment" i. e., if false evidence is substantial and of importance to indictment being returned.—State v. Reese, 570 P.2d 614, 91 N.M. 76.—Const Law 265.

MATERIAL TO PREPARATION OF DEFENSE

AFCMR 1992. For information to be discoverable as "material to preparation of defense," it is not sufficient that it bears some abstract logical relationship to issues in case; rather, there must be some indication that pretrial disclosure of disputed evidence will enable accused significantly to alter the quantum of proof in his favor. R.C.M. 701(a)(2).—U.S. v. Branoff, 34 M.J. 612, review gr in part 37 M.J. 61, set aside 38 M.J. 98, on remand 1993 WL 541222, review granted 40 M.J. 50, affirmed 40 M.J. 50.—Mil Jus 933.

MATERIAL TO RISK

C.C.A.5 (Ala.) 1941. Where one of joint state agents of life insurance company obtained reinstatement of lapsed policy on his life and issuance of "family income riders" on two policies which greatly increased amount payable by concealing from insurer's examining physician a feeling of fullness in his abdomen, and next day went to his personal physician, who, after a thorough examination, performed operation which disclosed a cancerous condition, trial court properly directed verdict for company as to the reinstated policy and the riders, in beneficiary's actions thereon, under Alabama law making it insured's duty to advise compa-

ny of any change in physical condition "material to risk."—McDaniel v. United Ben. Life Ins. Co., 117 F.2d 339.—Insurance 2052, 3003(4).

C.C.A.9 (Cal.) 1934. Where insured was standing on ladder which slipped, throwing insured against projecting timber and destroying eye, and accident policy covered injury by violent, external means, statements in application that insured had received no medical treatment within seven years and that sight was not impaired, if false, did not involve matters "material to risk" within state statute as construed by state courts.—Dodge v. U.S., 74 F.2d 267.

C.C.A.4 (S.C.) 1933. Applicant's former abnormal blood pressure was "material to risk," where, if insurer had been informed of it, insurance would have been refused, or tests would have been required or higher premium would have been exacted.—Atlantic Life Ins. Co. v. Hoefer, 66 F.2d 464, certiorari denied 54 S.Ct. 229, 290 U.S. 701, 78 L.Ed. 603.

Ky. 1934. Fact is "material to risk" only when insurer, acting in accordance with usual custom of insurers, would not have issued policy had it known fact. Ky.St. § 639.—Citizens' Ins. Co. v. Whitley, 67 S.W.2d 488, 252 Ky. 360.—Insurance 2958.

Mo.App. 1938. Where skin eruption, necessitating hospitalization of insured about two months prior to making of application for life policy, cleared up and in no way contributed to her death, insured's false representation in application that she had never received any hospital treatment was not "material to risk" and did not invalidate policy. Mo.R.S.A. § 5843.—Doran v. John Hancock Mut. Life Ins. Co., 116 S.W.2d 172.—Insurance 3003(10).

N.J.Super.A.D. 1968. Inquiries propounded in disability insurance application form and truthfulness and completeness of answers thereto touching physical condition and pathological history of applicant are "material to risk" as matter of law.—Johnson v. Metropolitan Ins. Co., 240 A.2d 434, 99 N.J.Super. 463, certification granted 242 A.2d 14, 51 N.J. 466, reversed 251 A.2d 257, 53 N.J. 423.—Insurance 3003(4), 3016.

N.J.Ch. 1932. Representation in application for life policy is "material to risk," if reasonably influencing insurer in making contract, estimating risk, or determining premium.—Prudential Ins. Co. of America v. Holmes, 162 A. 135, 111 N.J.Eq. 115.—Insurance 3001.

Pa.Super. 1963. False answers in application that insured has not had medical or surgical attention are "material to risk" within statute providing that falsity of statement in application for insurance shall not bar right to recovery unless it materially affected acceptance of the risk. 40 P.S. § 757.—Magee v. National Life & Acc. Ins. Co., 192 A.2d 752, 201 Pa.Super. 140.—Insurance 3003(10).

Pa.Super. 1942. Inquiries in application for life policy regarding attendance by a physician within last three years, and regarding insured's suffering from shortness of breath, pain in chest and heart disease, were "material to risk" to be assumed by

insurer so that false and fraudulent answers thereto precluded recovery on life policy.—*Glickman v. Prudential Ins. Co. of America*, 29 A.2d 224, 151 Pa.Super. 52.—Insurance 3003(10).

Tex.Civ.App.—Austin 1913. The term “material to risk,” in Rev.Civ.St.1911, art. 4947, Vernon’s Ann.Civ.St. art. 5043, providing that false statements in an application for insurance shall not constitute a defense, unless the matter misrepresented was material to the risk, or actually contributed to the contingency on which the policy became due, means the making of some misrepresentation of fact which induced the insurance company to assume the risk, and where one procuring a policy on the life of his horse made misrepresentations as to the value of the horse and the consideration paid therefor and whether it was mortgaged, and the misrepresentations induced the insurance company to issue the policy, the misrepresentations were material and defeated a recovery on the policy stipulating that misrepresentations by insured should invalidate the policy.—*Indiana & Ohio Live Stock Ins. Co. v. Smith*, 157 S.W. 755, writ refused.

Tex.Civ.App.—Waco 1972. Under statute providing that a misrepresentation made in an application for a policy, or in policy, shall not be a defense to a suit brought on policy unless it can be shown that matter or thing misrepresented was material to risk or actually contributed to contingency or event on which policy became due and payable, misrepresentation is not “material to risk” unless it actually induces insurer to assume risk. V.A.T.S. Insurance Code, art. 21.16.—*Harrington v. Aetna Cas. & Sur. Co.*, 489 S.W.2d 171, ref. n.r.e.—Insurance 2958.

MATERIAL TO THE CASE

Cal.App. 1 Dist. 1942. Where plaintiff’s right to recover dividends declared after filing of complaint depended on the same issues as her right to recover previously declared dividends, the declaration of dividends after complaint was filed was “material to the case” made by complaint.—*Perkins v. Benguet Consol. Min. Co.*, 132 P.2d 70, 55 Cal.App.2d 720, certiorari denied 63 S.Ct. 1435, 319 U.S. 774, 87 L.Ed. 1721, rehearing denied 64 S.Ct. 429, 320 U.S. 803, 88 L.Ed. 485.

Ill.App. 3 Dist. 1971. Within statute providing for continuance at the instance of the State if the court determines that the State has exercised, without success, due diligence to obtain evidence “material to the case”, any evidence tending to establish the ultimate facts is “material to the case.” S.H.A. ch. 38, § 103–5(c).—*People v. Wilkes*, 276 N.E.2d 761, 2 Ill.App.3d 626.—Crim Law 595(0.5).

MATERIAL TO THE CONTRACT

C.C.A.9 (Cal.) 1941. The fact that prior to application for insurance against liability for damage resulting from operation of fleet of trucks several liability claims for personal injuries and property damage had been made against company by which applicant was at the time insured resulting in loss to such company was fact “material to the contract” within meaning of California statute requiring disclosure of material facts to insurer and authorizing

rescission of insurance contract for concealment. West’s Ann. Insurance Code, §§ 330–332, 334.—*Gates v. General Cas. Co. of America*, 120 F.2d 925.—Insurance 3021.

MATERIAL TO THE HAZARD ASSUMED

Mich. 1999. For a misstatement to be “material to the hazard assumed,” for purpose of the statutory provision permitting an insurer to rescind a policy if a false statement materially affected the hazard assumed by the insurer, the misstatement must be shown in some way to have affected the hazard or contributed to the loss. M.C.L.A. § 500.2218.—*Smith v. Globe Life Ins. Co.*, 597 N.W.2d 28, 460 Mich. 446.—Insurance 2958.

MATERIAL TO THE INQUIRY

C.C.A.3 (Pa.) 1944. Where defendant, accused of conspiracy to defraud United States by failing to file report of new tires and tubes, and other offenses, claimed that his failure to file report was due solely to receiving printed form too late, defendant’s false testimony explaining his failure to file subsequent forms which arrived on time was “material to the inquiry”, as affecting credibility of his explanation, and hence sustained conviction of perjury. Cr.Code, § 125, 18 U.S.C.A. § 1621.—*U. S. v. Weiler*, 143 F.2d 204, certiorari granted 65 S.Ct. 71, 323 U.S. 694, 89 L.Ed. 561, reversed 65 S.Ct. 548, 323 U.S. 606, 89 L.Ed. 495, 156 A.L.R. 496.—Perj 11(9).

C.C.A.3 (Pa.) 1944. Credibility of a witness is “material to the inquiry” within terms of perjury statute. Cr.Code § 125, 18 U.S.C.A. § 1621.—*U. S. v. Weiler*, 143 F.2d 204, certiorari granted 65 S.Ct. 71, 323 U.S. 694, 89 L.Ed. 561, reversed 65 S.Ct. 548, 323 U.S. 606, 89 L.Ed. 495, 156 A.L.R. 496.—Perj 11(9).

MATERIAL TO THE ISSUE

Del.Supr. 1958. “Perjury” consists of willfully, absolutely and falsely swearing to a matter material to the issue, and the words “material to the issue” do not mean that testimony for which indictment was laid must be material to main issue, but it is sufficient if it has a substantial bearing upon testimony relating to main issue. 11 Del.C. § 721.—*Mumford v. State*, 144 A.2d 150, 52 Del. 48, 2 Storey 48.—Perj 1, 11(2).

MATERIAL TO THE MARRIAGE

N.Y.A.D. 2 Dept. 2000. Fraud is “material to the marriage” where it is proven that the spouse seeking annulment relied on premarital representations and, had such representations not been made, he or she would not have consented to the marriage. McKinney’s DRL § 7, subd. 4.—*Murray v. Murray*, 706 N.Y.S.2d 164, 271 A.D.2d 587.—Marriage 58(7).

MATERIAL TO THE PREPARATION OF THE DEFENDANT’S DEFENSE

C.A.D.C. 1998. Records showing that defendant charged with selling crack cocaine was visited in

prison by occupant of residence from which defendant had answered informant's page concerning drug purchase, police records showing that officer had stopped defendant in same car that he used during second, aborted drug transaction, and pager records indicating that pager number called by informant was registered to defendant, were "material to the preparation of the defendant's defense," for purposes of determining whether they were required to be disclosed to defendant; it was non-dispositive that they tended to incriminate him. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Marshall, 132 F.3d 63, 328 U.S.App.D.C. 8, as amended.—Crim Law 700(3).

C.A.D.C. 1998. Evidence that is "material to the preparation of the defendant's defense," and which is thus required to be disclosed to defendant if intended for use by government as evidence in chief at trial, includes inculpatory as well as exculpatory evidence; it is just as important to preparation of defense to know its potential pitfalls as it is to know its strengths. Fed.Rules Cr.Proc.Rule 16(a)(1)(C), 18 U.S.C.A.—U.S. v. Marshall, 132 F.3d 63, 328 U.S.App.D.C. 8, as amended.—Crim Law 700(2.1).

MATERIAL TO THE PREPARATION OF THE DEFENSE

Army Ct.Crim.App. 2002. Term "material to the preparation of the defense" in court-martial rule requiring trial counsel to disclose physical evidence "material to the preparation of the defense" is not limited to exculpatory evidence under the *Brady* line of cases. R.C.M. 701(a)(2).—U.S. v. Adens, 56 M.J. 724.—Mil Jus 1262.

MATERIAL TO THE RISK

C.A.9 (Cal.) 1998. Failure of marine insurance application to disclose criminal background of crew member, including his prior conviction for knowingly secreting a boat and possessing unlawfully obtained certificate of title, was "material to the risk", justifying insurers' rescission of yacht policy under California law; member was held out as co-captain of vessel, he oversaw vessel's business, including acquiring insurance and overseeing major repairs and he lived on boat for several years, often in owner's absence for weeks and months at a time. West's Ann.Cal.Ins.Code § 1900(a).—C.N.R. Atkin v. Smith, 137 F.3d 1169.—Insurance 2996.

C.C.A.5 (Fla.) 1942. Where insured, who died from coronary occlusion two months after issuance of life policy, had 18 months before applying for the policy received medical treatment for same ailment and had submitted to an electro-cardiograph examination, insured's false answers in application that he had not consulted a physician for any complaint of heart or blood vessels, that he had not received medical treatment within past five years, and that he had never submitted to an electro-cardiograph examination were "material to the risk", precluding recovery on the policy as a matter of law.—Sun Life Assur. Co. of Canada v. Maloney, 132 F.2d 388.—Insurance 3003(10), 3003(11).

C.C.A.5 (Miss.) 1939. An operation for removal of infected cyst from abdomen, and attacks of "acute cholecystitis", or serious infection of the gall bladder, influenza and furunculosis were "serious and not trivial illnesses," and insured's representations in application for life policy that he had consulted physicians only for acute colds and an appendectomy and tonsillotomy and had had no disease of the gall bladder, were "material to the risk," as respects insurer's right to cancel policy within contestable period.—Home Life Ins. Co. v. Madere, 101 F.2d 292.—Insurance 3003(11).

C.C.A.5 (Tex.) 1931. That is "material to the risk" which would induce insurer to decline risk or charge higher premium.—Home Ins. Co. v. Currie, 54 F.2d 203.—Insurance 2958.

S.D.Fla. 1940. Where at time application for life policy was made insured's answers to questions regarding health and medical history were true but in interval between application and delivery of policy and payment of premium insured was under active observation and treatment of physician for heart ailment and complained that he was weak and "fainty" and felt a lump in his chest, such facts were "material to the risk" and failure to inform insurer thereof could not be excused on ground that they were mere trivial or casual symptoms.—Travelers Ins. Co. v. Wilkins, 33 F.Supp. 117, reversed 117 F.2d 646, certiorari denied 61 S.Ct. 1089, 313 U.S. 576, 85 L.Ed. 1533.—Insurance 3003(11).

Ga.App. 1943. A disease that does not contribute to or cause death cannot be said to be of a "serious nature" or "material to the risk" within meaning of life policy provision making policy voidable if insured within two years before date of policy received medical treatment not disclosed by policy or application and it is not shown that condition occasioning treatment was not of a serious nature or was not material to the risk.—Metropolitan Life Ins. Co. v. Rowe, 24 S.E.2d 826, 69 Ga. App. 192.—Insurance 3003(10).

Ill.App. 2 Dist. 1937. If changed condition of health of insured, occurring between time of application and time of delivery of life policy or payment of first premium, does not directly contribute to death of insured, change will not be deemed "material to the risk" so as to constitute a defense to action on the policy.—Kroon v. Travelers Ins. Co., 7 N.E.2d 935, 290 Ill.App. 35.—Insurance 3003(4).

Ind. 1938. A misrepresentation in an application for a life policy is "material to the risk" in a sense that will void the policy, if knowledge of the true facts would have led the insurer to decline the risk or accept it only for a higher premium.—Equitable Life Assur. Soc. of U.S. v. Strasberg, 14 N.E.2d 703, 214 Ind. 212.—Insurance 3001.

Ky. 1920. A fact is "material to the risk" when it is such that the insurer acting in accordance with the usual custom of insurance companies would not have issued the policy had he known it.—Hartford Fire Ins. Co. v. Golden, 224 S.W. 177, 188 Ky. 742.—Insurance 2958.

Ky. 1920. A fact is "material to the risk" when it is such that the insurer acting in accordance with the usual custom of insurance companies would not have issued the policy had he known it, and failure to disclose a material fact is fraudulent when insured knows it, or an ordinarily prudent person would know it, to be material to the risk.—*Hartford Fire Ins. Co. v. Golden*, 224 S.W. 177, 188 Ky. 742.—Insurance 2958, 2959.

Md. 1954. A false representation in application for insurance is "material to the risk" if it is such as would reasonably influence insurer's decision as to whether it should insure the applicant. Code 1951, art. 48A, § 171.—*John Hancock Mut. Life Ins. Co. of Boston, Mass. v. Adams*, 107 A.2d 111, 205 Md. 213.—Insurance 2958.

Mo.App. 1926. Representations in application that insured had never consulted, or been treated by, physician within two years, held "material to the risk."—*Simpson v. Metropolitan Life Ins. Co.*, 282 S.W. 454.—Insurance 3003(10).

N.J.Ch. 1943. False answers given by insured in response to questions in life policy application concerning the insured's past medical history were "material to the risk" and furnished basis for cancellation of the policy on ground of "equitable fraud".—*Metropolitan Life Ins. Co. v. Alvarez*, 30 A.2d 297, 133 N.J.Eq. 65.—Insurance 3003(4).

Pa.Super. 1940. Attendance by two physicians not named, treatment at hospital, and previous serious illness were matters "material to the risk" as respects right to recover on life policy.—*Kasmer v. Metropolitan Life Ins. Co.*, 12 A.2d 805, 140 Pa.Super. 46.—Insurance 3003(10).

Pa.Super. 1939. A fact is "material to the risk" when, if known to the underwriter, it would have caused him to refuse the risk, or would have been a reason for his demanding a higher premium.—*Verbich v. Greek Catholic Union of Russian Brotherhoods of U. S.*, 8 A.2d 452, 137 Pa.Super. 64.—Insurance 3003(4).

Pa.Super. 1939. Where fraternal benefit society waived medical examination and relied upon representations of sound health of insured who in application to increase death benefits under fraternal benefit certificate falsely represented that insured was of good health and application by terms of the benefit certificate as delivered became part of the contract, representations related to a matter "material to the risk" and beneficiary was barred from recovering more than the amount which he was entitled to recover by reason of insured's former membership in youth's branch of the society.—*Verbich v. Greek Catholic Union of Russian Brotherhoods of U. S.*, 8 A.2d 452, 137 Pa.Super. 64.—Insurance 3003(8).

Pa.Super. 1937. In application for life policy, inquiries concerning attendance by physician and treatment in hospital are "material to the risk" to be assumed by insurer unless it be for some trivial ailment.—*Loder v. Metropolitan Life Ins. Co.*, 193 A. 403, 128 Pa.Super. 155.—Insurance 3003(10).

Pa.Super. 1937. Inquiries in application for life policy concerning absence from work, health, and physical defects and infirmities were matters "material to the risk," as regards rights under policy issued to applicant who answered inquiries falsely.—*Boltz v. Metropolitan Life Ins. Co.*, 193 A. 400, 128 Pa.Super. 147.—Insurance 3003(4).

Pa.Super. 1937. Inquiry in application for life policy concerning attendance by physician was matter "material to the risk," as regards rights under policy issued to applicant who answered inquiries falsely.—*Boltz v. Metropolitan Life Ins. Co.*, 193 A. 400, 128 Pa.Super. 147.—Insurance 3003(10).

Tex.Civ.App.—Austin 1914. "Material to the risk," as used in Rev.St.1911, art. 4834, Vernon's Ann.Civ.St. art. 4834 (repealed. See V.A.T.S. Insurance Code, art. 10.15), means any fact concerning the health, condition, or physical history of the applicant which would naturally have influenced the insurer in determining whether to issue the certificate.—*Modern Brotherhood of America v. Jordan*, 167 S.W. 794.—Insurance 3003(4).

Tex.Civ.App.—San Antonio 1913. Statements, in an application for reinstatement in a mutual benefit association, that the applicant was of sound constitution, in good health, and that he had had no severe illness, local disease, or injury since his original petition, when in fact he had had malarial fever, had two operations for hydrocele, had suffered from dysentery and diarrhea or inflammation of the bowels, caused by catarrh of the stomach, and had disease of the genital organs, were misrepresentations "material to the risk" within Rev.Civ. St.1911, art. 4834, Vernon's Ann.Civ.St. art. 4834, providing that benefit certificates shall be noncontestable for misrepresentations by the applicant, unless material to the risk assumed, precluding recovery on the policy; any fact concerning the health, condition, or physical history of the applicant, which would naturally influence the association in determining whether it would grant the reinstatement, being material to the risk.—*Supreme Ruling of Fraternal Mystic Circle v. Hansen*, 153 S.W. 351, writ refused.

Tex.Civ.App.—Dallas 1942. False statements in application for life insurance as to prior consultations with and treatments by physicians are "material to the risk" and will void a policy issued in reliance thereon.—*Jackson v. National Life & Acc. Ins. Co.*, 161 S.W.2d 536, writ refused w.o.m.—Insurance 3003(10).

Tex.Civ.App.—Dallas 1935. Whether untrue answers, in nonmedical application for life insurance, that insured had never had goiter and that she had not had surgical operation or consulted physician within last 10 years were "material to the risk," held for jury, where application was not attached to policy, there was no evidence that insurer was fraternal benefit society, and there was evidence that operation for goiter five years previously was successful and that insured died of toxemia of pregnancy, Vernon's Ann.Civ.St. arts. 4820 et seq., 4834, 5043, 5050 (repealed. See V.A.T.S. Insurance Code, arts. 10.01 et seq., 10.15, 21.16, 21.24).—The

Praetorians v. Thompson, 79 S.W.2d 886, writ dismissed.—Insurance 3016.

Tex.Civ.App.—Texarkana 1915. A misrepresentation “material to the risk” is one concerning a fact which would induce the insurer to decline the insurance or to charge a higher premium.—*St. Paul Fire & Marine Ins. Co. v. Huff*, 172 S.W. 755.—Insurance 2958.

Tex.Civ.App.—Waco 1934. Statement “material to the risk,” within statute declaring provision in insurance policy that false statement therein shall render it void or voidable ineffective, unless such statement was material to risk, is statement concerning fact which would induce insurer to decline insurance or charge higher premium. *Vernon’s Ann.Civ.St. art. 5043* (repealed. See V.A.T.S. Insurance Code, art. 21.16).—*Ohio Cas. Ins. Co. v. Stewart*, 76 S.W.2d 873, writ dismissed.—Insurance 2958.

Va. 1939. Statements made by applicant for insurance in answer to questions as to his habits in the use of intoxicating liquor are “material to the risk.”—*Metropolitan Life Ins. Co. v. Johnson*, 2 S.E.2d 288, 172 Va. 506.—Insurance 3019.

MATERIAL TO THE TRANSACTION

M.D.Pa. 1994. Matter is “material to the transaction” for purposes of determining whether an innocent misrepresentation can be basis for fraud claim, when it is of such character that it determines whether transaction occurs.—*Fox’s Foods, Inc. v. Kmart Corp.*, 870 F.Supp. 599.—Fraud 18.

MATERIAL UNFORESEEN EVENTS OR CHANGED CONDITIONS

Ky. 1992. Changes in coal prices caused by increase or decrease in cost of producing coal, effects of inflation or deflation and then current market price of like quality coal were “material unforeseen events or changed conditions” within meaning of price adjustment clause of long-term coal supply contract. *KRS 355.2-615*.—*Kentucky Utilities Co. v. South East Coal Co.*, 836 S.W.2d 392, as modified on denial of rehearing, motion denied 836 S.W.2d 407, certiorari dismissed 113 S.Ct. 1147, 506 U.S. 1090, 122 L.Ed.2d 498.—Sales 77(1).

MATERIAL USED IN CONSTRUCTION OF PUBLIC WORK

N.D.Cal. 1933. Claimant, supplying conveyor, set up specially for use at government dam held entitled to recover there for under contractor’s bond as “material used in construction of public work,” where use thereof was impossible without conveyor being entirely reconstructed.—U.S., for use of *U.S. Rubber Co., v. Ambursen Dam Co.*, 3 F.Supp. 548.—U S 67(11).

MATERIAL VARIANCE

C.A.11 (Fla.) 1993. Failure to prove quantity of controlled substance alleged in indictment, which is not element of offense, is not “material variance” and, thus, does not require reversal.—U.S. v.

Adams, 1 F.3d 1566, rehearing denied U.S. v. *Davis*, 9 F.3d 1561, certiorari denied 114 S.Ct. 1310, 510 U.S. 1198, 127 L.Ed.2d 660, certiorari denied *Cohron v. U.S.*, 114 S.Ct. 1330, 510 U.S. 1206, 127 L.Ed.2d 677.—Controlled Subs 67; Crim Law 1167(1).

C.A.7 (Ill.) 1993. “Material variance” from indictment charging single conspiracy does not exist even if evidence arguably establishes multiple conspiracies if reasonable trier of fact could have found beyond reasonable doubt existence of single conspiracy charged in indictment; government is not required to show existence of formal agreement to conspire but may rely on circumstantial evidence and reasonable inferences.—U.S. v. *Mojica*, 984 F.2d 1426, rehearing denied (#90-1313), certiorari denied *Castaneda v. U.S.*, 113 S.Ct. 2433, 508 U.S. 947, 124 L.Ed.2d 653, habeas corpus denied U.S. v. *Bermudez*, 1993 WL 389326, post-conviction relief denied U.S. v. *Velasquez*, 1993 WL 400262, post-conviction relief denied *Granada v. U.S.*, 1994 WL 71493, post-conviction relief denied 1994 WL 330235, post-conviction relief dismissed U.S. v. *Concha*, 1994 WL 411370, affirmed 62 F.3d 1419, denial of post-conviction relief affirmed—Consp 43(12).

C.A.9 (Nev.) 1999. “Material variance” occurs when charging terms of indictment are left unaltered but evidence offered at trial proves facts materially different from those alleged in the indictment.—U.S. v. *King*, 200 F.3d 1207.—Ind & Inf 171.

C.A.1 (Puerto Rico) 1987. “Material variance” between indictment and proof at trial, such as will warrant reversal of conviction, is one which adversely affects defendant’s substantial rights by depriving him of sufficiently specific information to prepare defense, by unfairly surprising him at trial, or by isolating him from constitutional protection against double jeopardy. U.S.C.A. Const.Amend. 5.—U.S. v. *Fermin Castillo*, 829 F.2d 1194.—Crim Law 1167(1); Ind & Inf 171.

C.A.5 (Tex.) 1994. “Material variance” occurs when variation between proof and indictment occurs, but does not modify essential element of offense charged.—U.S. v. *Thomas*, 12 F.3d 1350, rehearing granted, certiorari denied *Serna Sanchez v. U.S.*, 114 S.Ct. 1861, 511 U.S. 1095, 128 L.Ed.2d 483, certiorari denied *Gregg v. U.S.*, 114 S.Ct. 2119, 511 U.S. 1114, 128 L.Ed.2d 676, appeal after remand U.S. v. *Hodgkiss*, 116 F.3d 116, certiorari granted, vacated 118 S.Ct. 597, 522 U.S. 1012, 139 L.Ed.2d 486.—Ind & Inf 171.

C.A.4 (W.Va.) 2001. A defendant may establish that a “material variance” occurred by showing that the indictment alleged a single conspiracy but that the government’s proof at trial established the existence of multiple, separate conspiracies.—U.S. v. *Bollin*, 264 F.3d 391, certiorari denied *Tietjen v. U.S.*, 122 S.Ct. 303, 534 U.S. 935, 151 L.Ed.2d 225, certiorari denied *Gormley v. U.S.*, 122 S.Ct. 1544, 535 U.S. 989, 152 L.Ed.2d 469.—Consp 43(12).

C.C.A.2 (N.Y.) 1940. Where indictments were for violating statute regarding sending of obscene

printed matter through mails and where circulars mailed were not obscene, and prosecution made a case only under the part of the statute which forbids sending information of where obscene writings can be obtained, the indictments were not duplicitous and there was not a "material variance". Cr. Code, § 211, 18 U.S.C.A. § 1461.—U.S. v. Rebuhn, 109 F.2d 512, certiorari denied 60 S.Ct. 976, 310 U.S. 629, 84 L.Ed. 1399.—Ind & Inf 125(1); Postal 48(8).

D.N.J. 1940. In trial for purchasing live poultry in interstate commerce without license, government's proof that defendant purchased poultry from corporation within state wherein defendant did business was "material variance" from allegations of information that defendant purchased poultry from sources outside such state. 7 U.S.C.A. § 218 et seq.—U.S. v. Independent Meat & Poultry Market, 32 F.Supp. 317.—Ind & Inf 175.

M.D.Pa. 1941. In prosecution of motor carrier for violation of Motor Carrier Act, proof of the granting of rate concessions on shipment of linseed oil on September 1, 1939, under count of information charging violation of law with respect to such shipment on September 9, 1939, did not constitute such "material variance" as would entitle carrier to a new trial, where other details with respect to such transaction were identical in allegations of information and in proof so that carrier could not have been misled by the allegation in information. Motor Carrier Act 1935, §§ 201 et seq., and 206(a), 222(a), (c), 49 U.S.C.A. §§ 301 et seq., 306(a), 322(a), (c).—U.S. v. Deardorff, 40 F.Supp. 512.—Crim Law 915.

Ala. 1940. Where accused was charged with grand larceny of and with buying, receiving, concealing or aiding in concealing one No. 64½ Marcy-Ball Mill of the value of \$1,500, but the proof did not show that there was a theft of the mill as a whole at any time or place but tended only to show that the mill had been destroyed and parts of it stolen and carried into another county and sold as scrap iron, there was a "material variance" between allegations and proof fatal to conviction.—Milam v. State, 198 So. 863, 240 Ala. 314.—Larc 40(4).

Ala.Crim.App. 1995. To be "material variance," variance in indictment from that proved by evidence must be such as to be misleading or substantially injurious to accused in making his defense, or to expose him to danger of second trial on same charge.—Gilmer v. State, 675 So.2d 67, rehearing denied, and certiorari denied.—Ind & Inf 171.

Ala.Crim.App. 1995. Inaccurate statement of mobile home ownership in indictment charging defendant with discharging firearm into occupied mobile home did not prejudice or mislead defendant in any way and, thus, was not "material variance" where defendant admitted that he fired at mobile home where victim was sleeping.—Gilmer v. State, 675 So.2d 67, rehearing denied, and certiorari denied.—Ind & Inf 175.

Ala.App. 1940. Where accused was charged with grand larceny of, and with buying, receiving, concealing, or aiding in concealing one No. 64½

Marcy-Ball Mill of the value of \$1,500, but the proof tended only to show that the mill had been unlawfully, wantonly, or maliciously destroyed or injured, and that some scrap iron therefrom had been stolen, there was a "material variance" between allegations and proof fatal to conviction.—Milam v. State, 198 So. 860, 29 Ala.App. 494, certiorari denied 198 So. 863, 240 Ala. 314.—Larc 40(4).

Cal. 1942. Proof of an oral contract where a written agreement has been alleged is a "material variance" between the pleading and proof which requires a reversal if the variance has actually misled the adverse party to his prejudice. Code Civ. Proc. § 469.—Sublett v. Henry's Turk & Taylor Lunch, 131 P.2d 369, 21 Cal.2d 273.—App & E 1039(13).

Cal. 1942. Where a written contract is alleged and an oral contract is proved, the variance is a "material variance" if it has resulted in misleading the adverse party by depriving him of the defense afforded by the statute of limitations. Code Civ. Proc. § 469.—Sublett v. Henry's Turk & Taylor Lunch, 131 P.2d 369, 21 Cal.2d 273.—Contracts 346(16).

Cal.App. 1 Dist. 1984. Only "material variance" between pleading and proof is fatal to case; "material variance" is one which is prejudicially misleading to adverse party.—People v. Toomey, 203 Cal. Rptr. 642, 157 Cal.App.3d 1.—Plead 388.

Cal.App. 4 Dist. 1934. Variance between pleading and proof is not "material variance" unless adverse party has been misled to his prejudice in maintaining action or defense upon merits.—Lan-dreth v. South Coast Rock Co., 29 P.2d 225, 136 Cal.App. 457.

Colo. 1942. In prosecution for embezzlement, based on the alleged receipt of unauthorized commissions by directors and officers of building and loan association, proof that intent to convert was formed prior to the time the funds allegedly embezzled came into possession of defendants as agents of the association did not constitute a "material variance" between the offense charged and the proof so as to preclude conviction on charge of statutory embezzlement. 35 C.S.A. c. 48, § 99.—Lewis v. People, 123 P.2d 398, 109 Colo. 89.—Embez 35.

Conn. 1969. "Material variance" sufficient to warrant reversal of a judgment is departure from allegations in some matter essential to charge or claim. Practice Book 1963, §§ 134, 150.—Strimiska v. Yates, 257 A.2d 814, 158 Conn. 179.—Plead 388.

Conn.App. 1996. There was no "material variance" between allegation and proof in personal injury action arising from automobile accident, even though plaintiff never amended his complaint to allege disc herniation or surgery to correct that condition, and even though evidence on these matters was introduced; plaintiff disclosed to defendants, prior to trial, physicians' reports indicating nature and extent of injuries and treatment thereof, including information about disc herniation, defen-

dants knew extent and percentage of permanent disability that would be adduced at trial, and defendant admitted that he was not surprised by either evidence or claim with respect to that injury. Practice Book 1978, § 178.—*Marchetti v. Ramirez*, 673 A.2d 567, 40 Conn.App. 740, certification granted in part 675 A.2d 884, 237 Conn. 914, affirmed 688 A.2d 1325, 240 Conn. 49.—*Damag* 157(1).

Conn.App. 1996. There is “material variance” between allegation and proof where defendant is prejudiced in maintaining its defense, surprised by proof, or misled by allegations in complaint. Practice Book 1978, § 178.—*Marchetti v. Ramirez*, 673 A.2d 567, 40 Conn.App. 740, certification granted in part 675 A.2d 884, 237 Conn. 914, affirmed 688 A.2d 1325, 240 Conn. 49.—*Plead* 387.

Fla. 1940. Where bill, in suit against incorporated racing association to compel association to deliver stock or value thereof to plaintiff on ground that association induced plaintiff's intestate to become a director in return for an agreement to issue stock to intestate alleged that association's authorized capital stock was 15,000 shares, that proof showed that capital stock was divided into two classes composed of 15,000 shares of common stock and 5,000 shares of preferred stock was not a “material variance” under the testimony.—*Muller v. Gables Racing Ass'n*, 196 So. 864, 142 Fla. 834.—*Spec Perf* 117.

Ill.App. 1 Dist. 1985. Omission of contractor's president's signature on corporate signature page in proposal and acceptance section of bid package created “material variance,” rather than an informality, rendering its bid unresponsive and necessitating city to disregard it, notwithstanding fact that it signed its bid package in seven different locations and that it executed bid bond.—*George W. Kennedy Const. Co., Inc. v. City of Chicago*, 90 Ill.Dec. 113, 481 N.E.2d 913, 135 Ill.App.3d 306, appeal allowed, vacated 96 Ill.Dec. 700, 491 N.E.2d 1160, 112 Ill.2d 70.—*Mun Corp* 336(2).

Ill.App. 4 Dist. 1999. Test for determining whether a variance in bid for public contract is a “material variance,” thereby requiring rejection of the bid, is whether it gives a bidder a substantial advantage or benefit not enjoyed by other bidders.—*Bodine Elec. of Champaign, a Div. of Rathje Enterprises, Inc. v. City of Champaign*, 238 Ill.Dec. 368, 711 N.E.2d 471, 305 Ill.App.3d 431.—*Pub Contr* 10.

Ill.App. 4 Dist. 1999. Contractor's submission of 5% bid bond in connection with bid for city construction contract, instead of 10% bid bond required as condition by both project's bid packet instructions and city ordinance, was a “material variance” in bid which could not be waived by city; contractor received substantial competitive advantage, in that it stood to lose significantly less money if it decided not to contract with city.—*Bodine Elec. of Champaign, a Div. of Rathje Enterprises, Inc. v. City of Champaign*, 238 Ill.Dec. 368, 711 N.E.2d 471, 305 Ill.App.3d 431.—*Mun Corp* 336(2).

Ind. 1940. In prosecution for buying stolen goods, variance between charge that goods were stolen in designated county, and proof that goods

were stolen in different county, was not a “material variance”, where county in which goods were stolen would have made no difference to defense or opportunity to prepare defense, and defendant was not prejudiced by such variance.—*McCallister v. State*, 26 N.E.2d 391, 217 Ind. 65.—*Ind & Inf* 175.

Ind.App. 5 Dist. 1994. Elevator company's failure to include penal sum amount on its bid bond did not constitute “material variance” from bond requirements in action challenging award of public contract to elevator company; bond was signed by representatives of company and company's surety, and statute providing for curing of defective bonds obligated elevator company under bond for at least minimum penal sum amount set forth in bid requirements despite company's failure to state penal sum in bond. West's A.I.C. 34-1-64-1.—*Schindler Elevator Corp. v. Metropolitan Development Com'n*, 641 N.E.2d 653.—*Pub Contr* 8.

Ind.App. 5 Dist. 1994. Fact that elevator company's bid for public contract was listed, numerically, as “\$2,399,000” and was written out as “two million three hundred ninety-nine dollars” did not constitute “material variance” in bid which would have rendered company's bid nonresponsive in action challenging award of public contract to elevator company where discrepancy was merely typographical error and city followed correct procedures in resolving discrepancy.—*Schindler Elevator Corp. v. Metropolitan Development Com'n*, 641 N.E.2d 653.—*Pub Contr* 8.

Kan. 1925. Only “material variance,” which is one which may have misled defendant to his prejudice in preparing and making his defense, is of any consequence in an appellate review.—*State v. Earley*, 239 P. 981, 119 Kan. 446.

Ky. 1942. An indictment for violation of the so-called “cold check law”, which failed to negative the additional ground of defense to the charged crime that the accused was guilty of the offense if he knew at the time of uttering the check that he did not have sufficient funds in the bank or credit with it for the payment of the check issued by him in full upon its presentation, was insufficient because of “material variance” with the statute. Ky. St. § 1213a.—*Com. v. Bandy*, 165 S.W.2d 337, 291 Ky. 721.—*Ind & Inf* 111(1).

Mass. 1939. In suit to reach and apply shares of stock standing in name of defendant in satisfaction of alleged debt arising out of purchase of stock for defendant, trial judge's finding that plaintiff told defendant he had plenty of collateral with certain brokerage company when, in fact, evidence disclosed that plaintiff told defendant collateral was with another company did not constitute “material variance,” where defendant admitted that plaintiff told him that he had plenty of collateral and would carry the stock on his account. G.L.(Ter.Ed.) c. 214, §§ 3(7), 12; c. 231, § 7, Second (M.G.L.A.)—*Fuller v. Lovell*, 24 N.E.2d 528, 304 Mass. 542.—*Brok* 37.

Mass. 1931. Failure to prove immaterial allegation did not constitute “material variance.”—*Fitchburg Sav. Bank v. Massachusetts Bonding & Insur-*

ance Co., 174 N.E. 324, 274 Mass. 135, 74 A.L.R. 274.—Plead 388.

Mo. 1992. Variance between information and verdict-directing instruction which affects whether defendant received adequate notice from information is “material variance” for purposes of ascertaining whether variance constitutes reversible error.—*State v. Lee*, 841 S.W.2d 648, denial of habeas corpus affirmed *Lee v. Gammon*, 222 F.3d 441.—Crim Law 1167(1).

Mo.App. 1942. In employee’s action against employer for burns allegedly caused by muriatic acid solution used in cleaning outside brick walls of building, variance between allegation in petition that burn occurred on or about February 1, 1939, and proof that burn occurred some time during January, 1939, was not “material variance”, and petition would be considered amended to conform with proof.—*In re Rohde’s Estate*, 157 S.W.2d 527.

Mont. 1948. A “material variance” between pleadings and proof is one which actually misleads the adverse party to his prejudice in maintaining his action or defense upon the merits, while an “immaterial variance” is a discrepancy between pleadings and proof of a character so slight that adverse party cannot say that he was misled thereby. *Rev.Codes 1935*, §§ 9183, 9184.—*Pritchard Petroleum Co. v. Farmers Co-Op. Oil & Supply Co.*, 190 P.2d 55, 121 Mont. 1.—Plead 398.

Mont. 1948. Variance between allegation that value of use of realty wrongfully occupied and used by defendant as a gasoline station was 1¢ per gallon of gasoline and oil and 1¢ per pound of grease sold from the premises, and proof of the reasonable rental value of the realty, was not such a “material variance” as would require amendment of complaint or justify entry of nonsuit, in view of defendant’s denial that property had any use value and affirmative allegation that it had no rental value whatever and defendant’s clear conception of the facts and law involved as disclosed by entire record. *Rev.Codes 1935*, §§ 8659, 8687, 9183, 9184.—*Pritchard Petroleum Co. v. Farmers Co-Op. Oil & Supply Co.*, 190 P.2d 55, 121 Mont. 1.—*Impl & C C* 84.

Okla.Crim.App. 1943. Where description of searched premises, including accused’s name, was identical in warrant to that in complaint which included a description of the premises by metes, bounds, section, township, and range, and affidavit contained prayer that warrant be issued to sheriff or any constable of specified county, there was no “material variance” between description of warrant stating the premises to be in the specified county and affidavit, although affidavit did not mention that premises were in the specified county.—*McAmis v. State*, 141 P.2d 301, 77 Okla.Crim. 281.—*Searches* 126.

Okla.Crim.App. 1943. In prosecution for unlawful transportation of liquor, after former conviction of violating liquor laws, there was no “material variance” between allegation of information that sentence pronounced on former conviction was 30 days in jail and fine of \$150, and the evidence

which showed that it was sentence of 60 days in jail and fine of \$150. 21 Okl.St. Ann. § 51.—*Long v. State*, 140 P.2d 600, 77 Okla.Crim. 174.—*Ind & Inf* 171.

Okla.Crim.App. 1943. In prosecution for second-degree forgery after former conviction of a felony, fact that information alleged that former conviction was on July 29, 1936, and evidence showed that it was on September 29, 1936, did not prejudice defendant or constitute a “material variance”. 21 Okl.St. Ann. §§ 51, 1577.—*O’Neil v. State*, 134 P.2d 1033, 76 Okla.Crim. 107.—Crim Law 1167(1).

Okla.Crim.App. 1943. State must prove the allegations of the information beyond a reasonable doubt, but, when it has done so either by direct or circumstantial evidence, the defendant then has the opportunity of presenting his defense, and, if the has been misled or prejudiced by reason of error in the number of case or date of prior conviction alleged, there would be a “material variance”. 21 Okl.St. Ann. § 51.—*O’Neil v. State*, 134 P.2d 1033, 76 Okla.Crim. 107.—*Ind & Inf* 171.

Okla.Crim.App. 1942. In prosecution for larceny of turkeys, the fact that minor daughter of the man alleged in information to be the owner of stolen turkeys claimed the turkeys did not constitute a “material variance” between information and proof. 21 O.S.1951 § 1719; 22 O.S.1951 § 406.—*Cassell v. State*, 128 P.2d 1016, 76 Okla.Crim. 79, rehearing denied 134 P.2d 372, 76 Okla.Crim. 79.—*Larc* 40(9).

Okla.Crim.App. 1941. Where no crime was alleged in preliminary complaint, and no information was filed in the district court, trial court erred in permitting an amendment by interlineation when case was called for trial, in order to permit a crime to be charged against defendant, since the amendment constituted a “material variance” prejudicial to defendant’s rights. 22 Okl.St. Ann. § 304.—*Potts v. State*, 113 P.2d 839, 72 Okla.Crim. 91.—*Ind & Inf* 122(1).

Okla.Crim.App. 1941. In prosecution for illegal transportation of whisky, where deputy sheriff who was only witness called testified on behalf of state that broken and unbroken bottles taken from defendant’s automobile had contained liquor, and that the automobile had the odor of liquor about it, but the unbroken bottles were in evidence and court instructed that jury must find that defendant transported whisky, any variance between charge and proof was not a “material variance”.—*Hatley v. State*, 113 P.2d 396, 72 Okla.Crim. 69.—*Int Liq* 223(3).

Pa. 1940. When statement of claim contains two averments, one material to the issue and the other immaterial, proof of material averment alone does not constitute such a “variance” as gives defendant any legal grounds for complaint, since a “material variance” must relate to some matter which in point of law is essential to the claim.—*Nelson v. Damus Bros. Co.*, 16 A.2d 18, 340 Pa. 49.—Plead 388.

Pa. 1940. Where plaintiff's statement alleged negligence arising from improper operation of two trucks, both allegedly belonging to defendant, there was no "material variance" so as to justify a new trial because proof showed that only the unlighted truck was defendant's, where, to justify verdict against defendant, it was necessary only to prove that truck collided with belonged to defendant and ownership of other truck was immaterial.—*Nelson v. Damus Bros. Co.*, 16 A.2d 18, 340 Pa. 49.—*New Tr* 18.

Pa. 1927. "Material variance" consists in substantial departure from issues on which cause of action must depend. "material variance" consists in a substantial departure from the issues on which the cause of action must depend, and if the evidence can be reasonably made to conform with any of the pleadings, there is no variance.—*Kern v. Smith*, 139 A. 450, 290 Pa. 566.—*Plead* 388.

Pa. 1927. "Material variance" consists in substantial departure from issues on which cause of action must depend.—*Kern v. Smith*, 139 A. 450, 290 Pa. 566.—*Plead* 388.

Pa.Super. 1996. "Material variance" consists of departure in evidence from issues on which cause of action must depend.—*Reynolds v. Thomas Jefferson University Hosp.*, 676 A.2d 1205, 450 Pa.Super. 327, reargument denied, appeal denied 700 A.2d 442, 549 Pa. 703.—*Plead* 388.

Pa.Super. 1943. In action in assumpsit to recover moneys loaned to and expended for defendant, where plaintiff's statement of claim set forth a loan and items expended on defendant's behalf, and defendant pleaded payment by cash and the giving of a note in the amount of \$400, plaintiff's evidence that the \$400 note represented other indebtedness did not present a "material variance" where the \$400 note was not mentioned in the statement of claim and was interposed by defendant.—*Goldstein v. Goldstein*, 33 A.2d 80, 152 Pa.Super. 570.—*Paymt* 63(4).

R.I. 1940. There existed no "material variance" between a description of an obstruction in a public highway as being located "about" a stated number of feet from northerly line of stated street and at a point "about" opposite named premises contained in notice to city of claim for injuries to pedestrian, and proof that there were two similar obstructions at approximately the place described in notice where city was not deceived or put to any disadvantage by the description. *Gen.Laws* 1938, c. 352, § 7.—*Malo v. McAloon*, 13 A.2d 245, 65 R.I. 26.—*Mun Corp* 816(11).

S.C. 1993. Variance between single drug trafficking conspiracy charged in indictment and several conspiracies proved was "material variance" and could not support convictions of defendants not involved in charged conspiracy, but only those who were so involved. *Code* 1976, § 44-53-370(e)(3)(c).—*State v. Gunn*, 437 S.E.2d 75, 313 S.C. 124, certiorari denied *Childers v. South Carolina*, 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383.—*Consp* 43(12).

S.C. 1941. Any variance between pleadings seeking an adjudication that portion of will, bequeathing property in trust forever to be maintained as a museum, had failed and property involved had become part of residuary estate, and proof tending to establish that trust provided for was not a charitable trust, was not a "material variance" under statute, since adverse party could not have been misled thereby, where such evidence was first introduced at first reference and hearings continued intermittently over a period of five years. *Code* 1942, § 490.—*Medical Soc. of South Carolina v. South Carolina Nat. Bank of Charleston*, 14 S.E.2d 577, 197 S.C. 96.—*Wills* 702.

Tex.Crim.App. 1947. That indictment charged that defendant killed deceased by shooting her with a gun while evidence showed that he shot her with a pistol did not constitute a "material variance". *Pen.Code* 1925, art. 1202.—*Adams v. State*, 202 S.W.2d 933, 150 Tex.Crim. 431.—*Homic* 877.

Tex.Crim.App. 1942. A variance between indictment and proof is not a "material variance" unless it appears that some substantial injury resulted therefrom.—*Thurmon v. State*, 167 S.W.2d 528, 145 Tex.Crim. 279.—*Ind & Inf* 171.

Tex.Crim.App. 1937. A "material variance" at law is such a difference between the essential parts of a legal proceeding that one of such parts is rendered ineffectual to such a degree that the proceeding fails.—*Crum v. State*, 101 S.W.2d 270, 131 Tex.Crim. 631.

Tex.Civ.App.—*El Paso* 1941. In suit for balance due on purchase price of fruit can labels, proof that delivery of merchandise in accordance with contract was tendered and refused did not constitute a "material variance" although petition alleged that merchandise was delivered and accepted by buyer, where seller's reply, to which no exception was urged, alleged in the alternative a return of merchandise and wrongful refusal thereof by buyer.—*Taormina Corp. v. International Playing Card & Label Co.*, 154 S.W.2d 949, writ refused w.o.m.—*Sales* 355(4).

Tex.Civ.App.—*Eastland* 1939. There is no "material variance" between allegation and proof unless it should have misled the adverse party to his prejudice.—*Bell v. Bell*, 135 S.W.2d 546.

Tex.Civ.App.—*Galveston* 1942. Under Civil Procedure rule that plaintiff's pleadings shall consist of a statement of his cause of action and contain a short statement thereof sufficient to give fair notice of the claim and a demand for judgment for the relief sought, there was no "material variance" between pleading defendants' promise to pay prior to plaintiff's execution of an indemnity agreement and proof of defendants' agreement to pay after execution of the agreement. *Rules of Civil Procedure* rules 45, 47.—*Heffernan v. Ryan*, 163 S.W.2d 911, writ refused w.o.m.—*Contracts* 346(10).

Tex.Civ.App.—*Galveston* 1942. It is not every actual variance from the pleadings by the proof such as goes to mere circumstances, incidents, or causes contributing only to the main declaration

that constitutes a "material variance", because it does not go to the structural nature of the declared upon cause of action.—*Heffernan v. Ryan*, 163 S.W.2d 911, writ refused w.o.m.—Plead 388.

Utah 1994. In determining whether zoning change was a legislative change, "material variance" element asks trial courts to make factual determination as to magnitude or importance of disputed zoning change; even if court found zoning change fell outside general purpose and policy of original ordinance, it had to determine whether change was of sufficient magnitude to constitute material variance.—*Citizen's Awareness Now v. Marakis*, 873 P.2d 1117.—Zoning 191.

Wash. 1915. In an action by bank on a check which the complaint alleged it held as unqualified owner, the answer alleged that it was held as collateral, and the reply that it was taken on deposit, defendants' contention that the complaint tendered one issue, the reply another, and that the proof, which showed that the check was held as collateral, sustained neither, was not sound, since the pleadings presented as the real issue made was the quality of the bank's possession, which was determined by the evidence; a "material variance" being only one that actually misleads the adverse party to his prejudice in maintaining his action or defense on the merits.—*German-American Bank of Seattle v. Wright*, 148 P. 769, 85 Wash. 460, Am. Ann. Cas. 1917D, 381.

Wash.App. Div. 1 1980. If intended acceptance adds condition that can be implied in the original offer, condition is not "material variance" rendering the acceptance ineffective.—*Northwest Television Club, Inc. v. Gross Seattle, Inc.*, 612 P.2d 422, 26 Wash.App. 111, review granted 94 Wash.2d 1011, affirmed in part, reversed in part 634 P.2d 837, 96 Wash.2d 973, opinion amended 640 P.2d 710, 96 Wash.2d 973.—Contracts 24.

Wis. 1940. Where a good cause of action appears from proofs received without objection, a variance between allegations of complaint and evidence is not a "material variance," and pleadings may be taken as amended to conform to proofs. St.1937, §§ 263.31, 269.44, 269.52.—*Duffy v. Scott*, 292 N.W. 273, 235 Wis. 142, 129 A.L.R. 487.—Plead 237(5).

Wyo. 1915. In an action to recover rent, where the petition alleged that the term of the lease commenced April 12th, the court's finding that the correct date was May 8th, with judgment accordingly, was not a "material variance" within Comp.St. 1910, § 4591, providing that no variance between allegations and proof shall be material unless it has actually misled the adverse party to his prejudice, and that, when it is alleged that a party has been so misled, that fact and the respect in which he was misled must be shown.—*Engen v. Olson*, 145 P. 756, 22 Wyo. 522.

MATERIAL VARIATION

C.C.A.10 (N.M.) 1948. Under New Mexico law a "material variation" between pleadings and proof is one which misleads adverse party to his prejudice

in maintaining action or defense.—*El Paso Electric Co. v. Surrency*, 169 F.2d 444.—Plead 398.

Pa.Super. 1940. Proceedings by city of Philadelphia on scire facias and judgment had thereunder in enforcement of municipal tax lien were invalid, where scire facias was instituted and judgment obtained against the "Estate of Augustavus W. F. Sulzer" instead of the correct name of "Gustavus W. F. Sulzer", since change was a "material variation" seriously affecting purpose and usefulness of registry acts. 53 P.S. §§ 4763, 4767.—*City of Philadelphia v. Sulzer's Estate*, 16 A.2d 749, 142 Pa.Super. 585, reversed 20 A.2d 233, 342 Pa. 37.—Mun Corp 980(3).

MATERIAL VIOLATION

Bkrtcy.N.D.Ohio 1988. Offeror's alleged failure to properly escrow at least 75,000 shares of stock in violation of condition placed on offering by the Ohio Division of Securities constituted a "material violation" of Ohio Securities Act, such as would entitle stock purchasers to bring action to rescind even absent any showing of harm. Ohio R.C. § 1707.43.—*In re Bell & Beckwith*, 89 B.R. 632.—Sec Reg 299.

Minn. 1940. The writing and mailing by a successful candidate for office of county supervisor, to a rival candidate, of an anonymous letter allegedly containing matters in violation of Corrupt Practice Act did not constitute such a "material violation" of the Corrupt Practice Act as would justify declaring election of party writing letter void, where letter was not circulated or distributed among the voters. Mason's Minn.St.1927, §§ 544, 570, 591.—*Effertz v. Schimelpfenig*, 291 N.W. 286, 207 Minn. 324.—Elections 231.

MATERIAL WARRANTY

Mo.App. 1946. A warranty in a marine policy that a yacht would be laid upon shore during the winter months was a "material warranty" for breach of which no recovery could be had on the policy. Mo.R.S.A. § 5935.—*Schaefer v. Home Ins. Co.*, 194 S.W.2d 718, 239 Mo.App. 586.—Insurance 3057.

Mont. 1931. Insured's agent's statement as to "year model" and age of automobile held "material warranty" (Rev.Codes 1921, §§ 8125, 8129, 8130).—*Weyh v. California Ins. Co.*, 296 P. 1030, 89 Mont. 298.—Insurance 3006.

S.D. 1939. A warranty of a material representation constitutes a "material warranty," and warranted statements in clearance certificates executed by bank in applying for renewal of fidelity bond that accounts of assistant cashier had been examined and found correct, and that all moneys had been accounted for, were "material statements." Rev. Code 1919, §§ 1391, 1407.—*Federal Deposit Ins. Corp. of Washington, D.C. v. Western Sur. Co.*, 285 N.W. 909, 66 S.D. 503.—Insurance 2999.

Tenn.Ct.App. 1934. Pleurisy and enlargement of liver, though in sense "temporary diseases," are "secondary diseases" pointing to existence of other

diseases, and hence unexplained suppression of information that applicant for insurance in fraternal benefit society had such diseases, when direct inquiry had been made, constituted "material warranty" avoiding policy.—*Brotherhood of Railroad Trainmen v. Daniels*, 75 S.W.2d 1019, 18 Tenn.App. 264.—Insurance 3003(11).

Tenn.Ct.App. 1934. Where applicant for insurance in fraternal benefit society had pleurisy and enlargement of liver six months before making application, false statement in application that he had consulted doctor during past five years only for bruised hand from which he had recovered constituted "material warranty" avoiding policy.—*Brotherhood of Railroad Trainmen v. Daniels*, 75 S.W.2d 1019, 18 Tenn.App. 264.—Insurance 3003(11).

MATERIAL WITNESS

C.A.4 (N.C.) 1964. Statute providing that judge shall disqualify himself in any case in which he is material witness and statute providing for motion to vacate sentence are to be construed together, and, when so construed, a judge passing upon such a motion to vacate a sentence imposed by him is not a "material witness" within the meaning of the other statute. 28 U.S.C.A. §§ 455, 2255.—*U.S. v. Smith*, 337 F.2d 49, certiorari denied 85 S.Ct. 1542, 381 U.S. 916, 14 L.Ed.2d 436.—Judges 47(1); Statut 223.2(8).

D.Colo. 1996. Probable cause supported defendant's arrest as "material witness" in Oklahoma City bombing case; after reciting why testimony of both defendant and his brother was required before investigating grand jury, Federal Bureau of Investigation (FBI) agent stated that defendant's renunciation of his United States citizenship and his association with suspect who had already been arrested in connection with bombing indicated that defendant's testimony could not be secured through issuance of subpoena. 18 U.S.C.A. § 3144.—*U.S. v. McVeigh*, 940 F.Supp. 1541.—Witn 20.

Ala.Crim.App. 1994. Judge presiding over post-conviction relief hearing, in which petitioner claimed denial of effective assistance in trial counsel's failure to object to petitioner's exclusion from individual voir dire of prospective jurors in capital murder trial, was not required to recuse himself, despite claim that judge, who also presided at murder trial, was "material witness" as to whether defendant was absent from voir dire; there were at least four other people who became witnesses on issue and, while three of them had no memory of relevant events, they were nevertheless potential sources of evidence. U.S.C.A. Const.Amend. 6.—*Daniels v. State*, 650 So.2d 544, rehearing denied, and certiorari denied, certiorari denied 115 S.Ct. 1375, 514 U.S. 1024, 131 L.Ed.2d 230.—Judges 47(1).

Ala.Crim.App. 1985. As a general rule, accused is not entitled to know the name of a confidential informer unless the informer was a "material witness" that is, an active participant in the illegal transaction which leads to the charges against the

accused.—*Allen v. State*, 494 So.2d 777.—Crim Law 627.10(1).

Ark. 1995. Police officer who was alleged by defendant to have threatened defendant immediately before defendant gave incriminating statement was "material witness" at hearing on defendant's motion to suppress statement, and state's failure to produce officer precluded state from establishing that statement was voluntarily given, where state did not give any response or explanation to objection arising from officer's absence at hearing.—*Foreman v. State*, 901 S.W.2d 802, 321 Ark. 167, appeal after remand 945 S.W.2d 926, 328 Ark. 583.—Crim Law 414.

Cal. 1997. Prosecution witness who testified that he ran and hid in closet during murders was not "material witness" within meaning of statute requiring disqualification of judge, if person within third degree of relationship to judge is likely to be material witness; witness' testimony was not important or necessary to merits of case and could not have affected outcome. West's Ann.Cal.C.C.P. § 170.1(a)(1).—*People v. Williams*, 941 P.2d 752, 66 Cal.Rptr.2d 573, 16 Cal.4th 635, rehearing denied, certiorari denied *Williams v. California*, 118 S.Ct. 1314, 523 U.S. 1027, 140 L.Ed.2d 478.—Judges 45.

Cal. 1997. "Material witness" within meaning of statute requiring disqualification of judge, if person within third degree of relationship to judge is likely to be material witness, is one who can give testimony that no one else or at least very few can give. West's Ann.Cal.C.C.P. § 170.1(a)(1).—*People v. Williams*, 941 P.2d 752, 66 Cal.Rptr.2d 573, 16 Cal.4th 635, rehearing denied, certiorari denied *Williams v. California*, 118 S.Ct. 1314, 523 U.S. 1027, 140 L.Ed.2d 478.—Judges 45.

Cal. 1978. Failure to disclose the identity of an informant who is a material witness results in dismissal of charges against defendant; informant is a "material witness" if it appears from the evidence presented that there is a reasonable possibility informant could give evidence on the issue of guilt which might result in defendant's exoneration, but is not a "material witness" when he simply points the finger of suspicion toward a person who has violated the law.—*People v. Wilks*, 578 P.2d 1369, 146 Cal.Rptr. 364, 21 Cal.3d 460.—Crim Law 627.10(1).

Cal. 1970. Person who was both an eyewitness to, and participant in, alleged sale of second made by defendant was a "material witness" on issue of guilt, so that prosecution was required to disclose witness' "identity", which included his name as well as all pertinent information which might have assisted defense to locate him. West's Ann.Evid. Code, §§ 1041, 1042; West's Ann.Health & Safety Code, § 11912.—*Eleazer v. Superior Court*, 464 P.2d 42, 83 Cal.Rptr. 586, 1 Cal.3d 847.—Crim Law 627.10(6).

Cal.App.1 Dist. 1976. Where defendant demonstrates reasonable possibility that anonymous informant whose identity he seeks could give evidence on issue of his guilt which might result in

defendant's exoneration, defendant has discharged burden of proving that informant would be "material witness," and is entitled to disclosure.—*People v. O'Brien*, 132 Cal.Rptr. 616, 61 Cal.App.3d 766.—Crim Law 627.10(7.1).

Cal.App. 2 Dist. 2001. Informant is a "material witness" under evidence code section governing privilege for identity of informer, if it appears there is a reasonable possibility informant could give evidence on issue of guilt which might result in defendant's exoneration. *West's Ann.Cal.Evid. Code* § 1041.—*People v. Luera*, 103 Cal.Rptr.2d 438, 86 Cal.App.4th 513.—Crim Law 627.10(1).

Cal.App. 2 Dist. 1987. "Informant" is not a "material witness" nor does his nondisclosure deny defendant a fair trial, within statute setting standards for disclosure of identity of "confidential informant", where the informant's testimony, though "material" on the issue of guilt, would only further implicate rather than exonerate defendant. *West's Ann.Cal.Evid.Code* § 1042(d).—*People v. Alderrou*, 236 Cal.Rptr. 740, 191 Cal.App.3d 1074.—Crim Law 627.10(1).

Cal.App. 2 Dist. 1984. In order for defendant to succeed in a motion to disclose an informant, informant must be a "material witness" to the issue of defendant's guilt or innocence; a "material witness" is one, who with reasonable possibility, could give evidence bearing on defendant's guilt that might exonerate defendant of the criminal charge.—*People v. Saldana*, 204 Cal.Rptr. 465, 157 Cal.App.3d 443.—Crim Law 627.10(1).

Cal.App. 2 Dist. 1975. Within rule that privilege for nondisclosure of an informant's identity does not apply if the informer is a material witness for a defendant, "material witness" means an informant with respect to whom there is a reasonable possibility that he could give evidence bearing on the defendant's guilt that might exonerate defendant of the criminal charge. *West's Ann.Evid.Code*, §§ 1041, 1042, 1042(d).—*People v. Tolliver*, 125 Cal.Rptr. 905, 53 Cal.App.3d 1036.—Crim Law 627.10(2.1).

Cal.App. 2 Dist. 1970. Eye witness to sale of narcotics for which defendant was being prosecuted was a "material witness" within requirements that police make good faith effort to obtain address of informer who is a material witness so that he can successfully be subpoenaed for attendance at trial.—*People v. Fortier*, 89 Cal.Rptr. 210, 10 Cal.App.3d 760.—Crim Law 627.10(6).

Fla. 1934. Necessity of calling trial judge to testify whether, at filing of petition in statutory cause for order that executors continue decedent's business, he stated to executors' counsel that it was unnecessary to give notice to interveners therein, and to establish that when court entered such order he had full knowledge of claims of interveners and their right to be heard, held not sufficient cause for judge's disqualification as "material witness," which term has reference to witness who gives testimony affecting merits of cause and about which no other witness might testify. *Comp.Gen.Laws* 1927, §§ 5614–5618; F.S.A. §§ 38.01 note, 38.01 et

seq.—*Wingate v. Mach*, 157 So. 421, 117 Fla. 104.—Judges 47(1).

Fla.App. 3 Dist. 2001. A "material witness" is one who possesses information going to some fact affecting the merits of the cause and about which no other witness might testify.—*Sardinas v. Lagares*, 805 So.2d 1024, rehearing denied.—*Witn* 4.

Ga.App. 1984. In view of evidence, in malpractice action against anesthesiologist, that physician had authorized administration of specified dose of drug which was then characterized by anesthesiologist as "seven to ten times the dose for a child," and other evidence, surgical performance of such physician became an issue in the case and he was thus a "material witness," as bearing upon right to continuance by reason of the absence of such witness. O.C.G.A. § 9–10–160.—*Ricketson v. Blair*, 320 S.E.2d 788, 171 Ga.App. 714.—*Pretrial Proc* 717.1.

Ill. 1974. Once defendant stipulated at trial that testimony of assistant state's attorney as to taking of confession would be the same as that of court reporter, it became obvious that state's attorney was not a "material witness" within rule that when voluntary nature of a confession is brought into question by motion to suppress the State must produce all material issues connected with the taking of the statements or explain their absence.—*People v. Smith*, 307 N.E.2d 353, 56 Ill.2d 328.—Crim Law 532(0.5).

Ill. 1968. Where a narcotics case in state court was one in which trial court at bench trial was faced with task of weighing credibility of policewoman who allegedly purchased heroin at apartment of federal informer from defendant against contrary defense testimony, and defendant contended that informer would have corroborated his testimony, but she was not available because she had been sent out of the state by federal officers 16½ months before trial, informer was a "material witness", and conviction of defendant could not stand because of informer's absence from the state.—*People v. Williams*, 240 N.E.2d 580, 40 Ill.2d 367.—Crim Law 661.

Ill.App. 1 Dist. 1998. Confidential informant was not "participant" or "material witness" to essential elements of defendant's delivery of cocaine to undercover officer, and thus her identity was properly withheld in criminal prosecution, where informant introduced undercover officer to defendant, informant was present for only small part of initial conversation between officer and defendant and did not take part in that conversation, officer never saw informant again, and informant was not present during any of defendant's cocaine sales to officer.—*People v. Rivas*, 236 Ill.Dec. 314, 707 N.E.2d 159, 302 Ill.App.3d 421, appeal denied 239 Ill.Dec. 612, 714 N.E.2d 531, 184 Ill.2d 569.—Crim Law 627.10(5).

Ill.App. 1 Dist. 1992. Defendant's testimony at suppression hearing that police sergeant beat him made sergeant a "material witness," and therefore state's failure to call sergeant at suppression hearing required remand for reopening of suppression

hearing so that sergeant could testify; however, reopened hearing would be limited to sergeant's testimony.—*People v. Jones*, 176 Ill.Dec. 382, 601 N.E.2d 1080, 234 Ill.App.3d 1082, appeal denied 180 Ill.Dec. 154, 606 N.E.2d 1231, 147 Ill.2d 632.—Crim Law 1181.5(7).

Ill.App. 1 Dist. 1989. "Material witness" rule requires that when voluntary nature of statement is brought into question by motion to suppress, State has burden of proving that it is voluntary by producing all material witnesses connected with taking of defendant's statement or by explaining that absence.—*People ex rel. Hatch v. Elrod*, 138 Ill.Dec. 643, 547 N.E.2d 1264, 190 Ill.App.3d 1004, appeal denied 142 Ill.Dec. 888, 553 N.E.2d 402, 131 Ill.2d 566, certiorari denied *Hatch v. Illinois*, 111 S.Ct. 128, 498 U.S. 845, 112 L.Ed.2d 96.—Crim Law 414.

Ill.App. 1 Dist. 1983. Interrogating officer was "material witness," whom State was required to produce or whose absence had to be explained, in proceedings to suppress allegedly involuntary statements, in light of defendants' testimony that officer had made threats, promised immunity in return for cooperation, and ignored defendants' request for counsel, notwithstanding that statements were actually made several hours after interrogation by officer had ceased. U.S.C.A. Const.Amend. 5; S.H.A. ch. 38, ¶ 114-11(d).—*People v. Lumpp*, 69 Ill.Dec. 528, 447 N.E.2d 963, 113 Ill.App.3d 694, appeal after remand *People v. Carr*, 119 Ill.Dec. 785, 523 N.E.2d 393, 168 Ill.App.3d 669.—Crim Law 414.

La. 1977. Concept of "material witness" as used in recusal statute refers to the judge's being a material witness in the actual trial of the criminal cause and not merely a witness at a hearing to determine whether he should be recused and, furthermore, testimony of the judge must relate to defendant's guilt or innocence; hence, trial judge was not required to recuse himself from hearing new trial motion on ground that he would be a witness to the issues raised by the motion and could not be called as a witness if he was presiding at the hearing. LSA-Cr.P. art. 671.—*State v. Tyler*, 342 So.2d 574, certiorari denied *Tyler v. Louisiana*, 97 S.Ct. 2180, 431 U.S. 917, 53 L.Ed.2d 227.—Judges 47(2).

Md.App. 1970. "Material witness," as used in rule that there is exception to nondisclosure privilege where informer was material witness to crime, means not merely that informer was eyewitness to the crime, but that his possible testimony is highly relevant and might be helpful to the defense.—*Nutter v. State*, 262 A.2d 80, 8 Md.App. 635.—Crim Law 627.10(1).

N.Y.Sup. 1939. In habeas corpus proceeding to secure release of one held in \$50,000 bail as a material witness pending investigation, evidence that large sums of money had been paid relator for transmission to others for purpose of accomplishing corrupt and criminal ends established that relator had information rendering him a "material witness" for the people. Code Cr.Proc. § 618-b.—*People ex rel. Ditchik v. Sheriff of Kings County*, 12

N.Y.S.2d 341, 171 Misc. 248, affirmed 12 N.Y.S.2d 232, 256 A.D. 1081.—Witn 20.

Okla.Crim.App. 1972. Assistant district attorney who participated in defendant's interrogation which resulted in confession was a "material witness" who should have been required to testify when called by defendant at preliminary examination.—*Martinez v. State*, 496 P.2d 416, 1972 OK CR 106.—Crim Law 234.

R.I. 1959. Under the statute authorizing the district court at any time before the grand jury makes its report or presentment regarding person charged with a crime to bind by recognizance "such witnesses as it shall deem material" to appear and testify at higher court, quoted phrase named such witnesses as court shall decide or judge to be material, and implies the hearing at which the judge shall be present who shall make a finding based upon the evidence that a given person is or is not a "material witness" or one whose testimony would affect the determination of the case. Gen.Laws 1956, §§ 12-13-12, 12-13-13.—*Quince v. Langlois*, 149 A.2d 349, 88 R.I. 438.—Witn 20.

Wis.App. 1998. Fact that trial court, in technical sense, "witnesses" actions of jurors, testifying witnesses, lawyers and parties does not transform trial court into "material witness" for purposes of recusal statute should actions witnessed by it become issue at trial. W.S.A. 757.19(2)(b).—*State v. Hampton*, 579 N.W.2d 260, 217 Wis.2d 614, review denied 584 N.W.2d 122, 219 Wis.2d 922.—Judges 47(1).

MATERIAL WITNESSES

Ill.App. 4 Dist. 1988. Witnesses who had neither control nor authority over defendants, nor did they have anything to do with taking of statements of defendants or statements made by defendants did not fall in the category of "material witnesses" required to be produced by the State at motion to suppress.—*People v. Fasse*, 124 Ill.Dec. 158, 528 N.E.2d 1049, 174 Ill.App.3d 457.—Crim Law 394.6(5).

N.Y.A.D. 1 Dept. 1960. Where pleadings in a libel and slander action showed that a vital issue on trial would be what plaintiff said and what some of the defendants said at a certain zoning board hearing, the stenographer or recording technicians who were present would be essential witnesses in case, as well as village officer and some spectators who attended the hearing, and such parties therefore would be "material witnesses" within section of Civil Practice Act pertaining to a change of venue on ground of convenience of material witnesses. Civil Practice Act, § 187, subd. 3.—*Condon v. Schwenk*, 199 N.Y.S.2d 238, 10 A.D.2d 822.—Venue 52(4).

Okla.Crim.App. 1987. Texas inmates whose testimony would not be admissible in trial or sentencing stage were not "material witnesses" within meaning of statute that permits out-of-state process for material witnesses, where testimony concerned instances of prior unrelated violence and other unlawful conduct by defendant's girl friend who

testified against defendant. 12 O.S.1981, §§ 2608, subd. B; 22 O.S. 1981, §§ 721–727.—Moore v. State, 736 P.2d 161, 1987 OK CR 68, certiorari denied 108 S.Ct. 212, 484 U.S. 873, 98 L.Ed.2d 163, post-conviction relief denied 809 P.2d 63, 1991 OK CR 43, certiorari denied 112 S.Ct. 313, 502 U.S. 913, 116 L.Ed.2d 255, denial of habeas corpus affirmed 153 F.3d 1086, certiorari denied 119 S.Ct. 1266, 526 U.S. 1025, 143 L.Ed.2d 362.—Witn 6.

Tex.Crim.App. 1977. In prosecution for delivery of LSD, court erred in refusing to order State to disclose names of informers, who made first contact with defendant, who introduced police officers to defendant as their boyfriends, who were present at sale of 100 “hits” of LSD, who were present during discussion of delivery of 1000 more “hits,” which was basis of offense charged, who were present in defendant’s apartment when further discussions took place as to arrangements for delivery, and who thus were shown to be “material witnesses.”—Stein v. State, 548 S.W.2d 61.—Crim Law 627.10(3).

MATERIAL WITNESS RULE

Ill. 1993. Under “material witness rule,” when voluntary nature of confession is questioned in motion to suppress, state must produce all material witnesses on issue of voluntariness or satisfactorily explain their absence. Ill.Rev.Stat.1989, ch. 38, ¶ 114–11(d).—People v. R.D., 184 Ill.Dec. 389, 613 N.E.2d 706, 155 Ill.2d 122.—Crim Law 532(0.5).

Ill. 1987. “Material-witness rule,” requiring State to present testimony of those present during misconduct alleged as basis for motion to suppress statement, does not require mechanical application.—People v. Brooks, 106 Ill.Dec. 30, 505 N.E.2d 336, 115 Ill.2d 510, certiorari denied Brooks v. Illinois, 108 S.Ct. 91, 484 U.S. 825, 98 L.Ed.2d 52.—Crim Law 414.

Ill.App. 1 Dist. 1992. Under “material witness rule,” state must produce all material witnesses to allegedly involuntary confession.—People v. Costillo, 181 Ill.Dec. 27, 608 N.E.2d 100, 240 Ill.App.3d 72.—Crim Law 532(0.5).

Ill.App. 1 Dist. 1984. “Material witness rule” requires that state produce all material witnesses, that is, all witnesses whose testimony is material to issue of voluntariness of challenged statement; alternatively, the state can explain failure of such witness to testify.—People v. Parquette, 78 Ill.Dec. 582, 462 N.E.2d 701, 123 Ill.App.3d 233.—Crim Law 414.

Ill.App. 2 Dist. 1989. “Material witness rule” applies where the voluntary nature of a confession is brought into question by a motion to suppress; under the rule, the State must produce all material witnesses connected with the taking of the statement or present during any alleged misconduct relating to the voluntariness of the statement, or else explain their absence.—People v. Gaytan, 134 Ill.Dec. 656, 542 N.E.2d 1163, 186 Ill.App.3d 919, appeal denied 139 Ill.Dec. 517, 548 N.E.2d 1073, 128 Ill.2d 667.—Crim Law 517(8).

Ill.App. 2 Dist. 1985. “Material witness rule” states that when voluntary nature of a confession is

brought into question by motion to suppress, burden is on state to prove that confession was voluntarily given and state must produce all material witnesses connected with taking of statements or explain their absence.—People v. Hollins, 90 Ill. Dec. 770, 482 N.E.2d 1053, 136 Ill.App.3d 1.—Crim Law 531(1), 532(0.5).

MATERIA MEDICA

C.C.A.9 (Cal.) 1943. “Materia medica” is defined as the material or substance of remedies; that branch of medical science which treats of the nature and properties of all the substances employed for the cure of diseases.—Empire Oil & Gas Corp. v. U.S., 136 F.2d 868.

C.C.A.5 (Fla.) 1939. Under Florida statute providing for practice of naturopathy with proviso denying authority to practice “materia medica” and under Florida Drug Act excepting from provisions registered “physicians” as defined to mean persons authorized to “practice medicine”, a “naturopath” was not a “physician” within Drug Act so as to be entitled to register and pay tax under Federal Narcotic Drug Act; the phrase “materia medica” in statute authorizing practice of naturopathy meaning the same as to “practice medicine” within definition of physician in Florida Drug Act and referring to use of drugs as medicine including morphine and kindred narcotics familiar to apothecary and doctors as “materia medica.” Acts Fla.1927, c. 12286, § 1, F.S.A. § 462.01; Acts Fla.1933, c. 16087, §§ 1–3, F.S.A. §§ 398.02 to 398.04; 26 U.S.C.A. § 1383 et seq.—Perry v. Larson, 104 F.2d 728.—Int Rev 5259.

C.C.A.5 (Fla.) 1939. Under Florida statute providing for practice of naturopathy employing among other agencies “phytotherapy” with proviso denying authority to practice “materia medica,” authority to employ “phytotherapy,” which means use of plants to heal, did not authorize use of morphine and kindred narcotics, although such drugs were of plant origin, their prescription being the use of “materia medica” reserved to practice of medicine and denied to naturopathic practitioner. F.S.A. §§ 398.02 to 398.04, 462.01.—Perry v. Larson, 104 F.2d 728.—Controlled Subs 9.

S.D.Fla. 1938. Naturopathic physicians licensed under the Florida statutes are not “physicians or other practitioners” within the Harrison Narcotic Act providing that “physicians and other practitioners” lawfully entitled to distribute, dispense, give away, or administer narcotic drugs are entitled to register with the collector of internal revenue and receive a special stamp and order forms to be used in the purchase of narcotics, in view of the fact that the Florida statute does not regard “naturopathy” as a practice of “materia medica” but authorizes licensees thereunder to practice the art of healing only in the “naturopathy” field. Harrison Narcotic Act § 1(d), 26 U.S.C.A. § 1383(d); F.S.A. §§ 398.02, 462.01 et seq.—Perry v. Larson, 25 F.Supp. 728, affirmed 104 F.2d 728.—Int Rev 5259.

Cal.Super. 1938. In prosecution of licensed chiropractor for treating the sick and afflicted without

having a valid unrevoked certificate to do so, where Chiropractic Act (See Gen.Laws, Act 4811) prohibited licensed chiropractors from using drugs or medicines included in "materia medica," court properly instructed that a licensed chiropractor was not authorized to use drugs or medicines listed in materia medica whether such were used separately or included as a constituent part in a compound or so-called proprietary medicine. St.1923, p. xxii, § 7.—*People v. Fowler*, 84 P.2d 326, 32 Cal.App.2d Supp. 737.—Health 176.

Wash. 1935. Chiropractic does not include and is outside of scope of "materia medica." RCW 18.25.010 et seq.—*State v. Wehinger*, 47 P.2d 35, 182 Wash. 360.—Health 176.

MATERNAL ANCESTOR

Ill.App. 1 Dist. 1951. The term "maternal ancestor" as used in statute providing that an illegitimate child is heir of his mother and of any maternal ancestor should not be given a restricted meaning. S.H.A. ch. 3, §§ 9, 12.—In re *Crapa's Estate*, 101 N.E.2d 611, 344 Ill.App. 503.—Child 87.

Ill.App. 1 Dist. 1951. The term "maternal ancestor" as used in statute providing that an illegitimate child is heir of his mother and of any maternal ancestor, included right of an alleged illegitimate child to inherit from her maternal grandson. S.H.A. ch. 3, §§ 9, 12.—In re *Crapa's Estate*, 101 N.E.2d 611, 344 Ill.App. 503.—Child 87.

MATERNAL ANCESTRAL REAL ESTATE

Ark. 1968. Where husband and wife acquired properties by purchase as an estate by entirety, their only child, a son, never married but lived with them and worked in their grocery store, father died intestate, and mother thereafter died leaving will naming son as sole devisee and legatee, properties were "new acquisitions" as to wife and "ancestral property" as to son, and on son's death the properties were "maternal ancestral real estate" which should be distributed to brothers and sisters, or children of deceased brothers and sisters, of wife.—*Buck v. Brashears*, 433 S.W.2d 377, 245 Ark. 583.—Des & Dist 14.

MATERNAL PREFERENCE RULE

La.App. 2 Cir. 1975. "Maternal preference rule" establishes a rebuttable presumption that the best interest of a child is better served by granting custody to the mother rather than the father.—*Caraway v. Caraway*, 321 So.2d 405, application denied 323 So.2d 479.—Child C 458.

MATHEMATICAL

Kan. 1925. "Mathematical" means theoretically precise.—*Wall v. Pierpont*, 240 P. 251, 119 Kan. 420.

MATHEMATICAL CERTAINTY

Okla. 1979. The term "mathematical certainty" as used in the statute relating to an election contest is ascertainable only by "mathematical computation"; if, by use of simple arithmetic, person "A"

receives more votes than person "B," it is mathematically certain that person "A" won the election; if, however, the number of so-called disputed votes exceeds the numerical margin by which one candidate is shown to have won over the other candidate, exclusive of the disputed votes, then "mathematical uncertainty" is shown to exist. 26 O.S.Supp.1974, § 8-120.—*Helm v. State Election Bd.*, 589 P.2d 224, 1979 OK 4.—Elections 295(1).

MATHEMATICAL COMPUTATION

Okla. 1979. The term "mathematical certainty" as used in the statute relating to an election contest is ascertainable only by "mathematical computation"; if, by use of simple arithmetic, person "A" receives more votes than person "B," it is mathematically certain that person "A" won the election; if, however, the number of so-called disputed votes exceeds the numerical margin by which one candidate is shown to have won over the other candidate, exclusive of the disputed votes, then "mathematical uncertainty" is shown to exist. 26 O.S.Supp.1974, § 8-120.—*Helm v. State Election Bd.*, 589 P.2d 224, 1979 OK 4.—Elections 295(1).

MATHEMATICAL DEMONSTRATION

Md. 1905. A "mathematical demonstration" is wholly different from a "moral certainty." Evidence of demonstration relates to necessary truths, truths as to which the supposition of the contrary involves not merely what is not and cannot be true, but what is also absurd, whereas moral evidence is the basis of contingent truth. It follows obviously that the convictions which these distinct and dissimilar classes of evidence are capable of producing are necessarily of very different natures. In the one absolute certitude is the result, to which moral certainty, the highest degree of assurance of which truths of the latter class admit, is necessarily inferior. *Wills*, Cir.Ev. 5. Moral certainty is that full and complete assurance which admits of no degrees, and induces a sound mind to act without doubt upon the conclusions to which it naturally and reasonably leads. 2 *Stewart's Elements*, c. ii, § 4. It is apparent, then, that the precision attainable in the one case is of a nature of which the other does not admit.—*Bowman v. Little*, 61 A. 1084, 101 Md. 273.

MATHEMATICAL ERROR

N.D.Cal. 1955. In the deficiency statute providing that if taxpayer is notified that, on account of mathematical error appearing on face of his return, an amount of tax in excess of that shown upon the return is due, assessment or collection of such amount cannot be enjoined, the term "mathematical error" refers to errors in arithmetic. 26 U.S.C.A. 272(a)(1), (f).—*Repetti v. Jamison*, 131 F.Supp. 626, affirmed 239 F.2d 901.—Int Rev 4637, 4920.

Fed.Cl. 1992. Taxpayer's claim that incorrect figures were used in Form 870-AD "Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment" to calculate his share of partnership's allowable deficiencies did not raise "an im-

portant mistake in mathematical calculation" that would warrant reopening case under terms of agreement; taxpayer did not assert that actual mathematical computations of numbers used were wrong, claiming instead that apparent failure by IRS appeals officer to use numbers in "key case" constituted a "mathematical error" as defined in statute. 26 U.S.C.A. § 6213(g)(2)(A).—Lowenstein v. U.S., 27 Fed.Cl. 38, affirmed 6 F.3d 786, rehearing denied, in banc suggestion declined, and rehearing denied.—Int Rev 4760.

Cal.App. 3 Dist. 1997. Department of Health Services' use of incorrect code, and its failure to include certain general acute care accommodation codes specific to change in hospital's Medicaid contract in determining hospital's share of supplemental Medi-Cal payments under the disproportionate share hospital (DSH) program was not a "mathematical error" that was retroactively correctable; mathematical error was mistake in addition, subtraction, multiplication or division. West's Ann. Cal.Welf. & Inst.Code § 14105.98(f)(5), (s).—Santa Ana Hospital Medical Center v. Belshe, 65 Cal. Rptr.2d 754, 56 Cal.App.4th 819.—Health 487(1).

Ill.App. 1 Dist. 1990. Partnership taxpayer's chosen subtraction adjustment, claiming July 1, 1979 effective date of personal property replacement income tax as operative valve limitation for partnership property sold in 1980, could be classified as "mathematical error" under Income Tax Act; thus Department could send correction notice rather than notice of deficiency and three-year limitation period for deficiency notice proceedings was inapplicable to Department's action for unpaid tax, penalties, and interest. S.H.A. ch. 120, ¶¶ 9-903(b), 15-1501(a)(12)(D).—Department of Revenue v. Walsh, 143 Ill.Dec. 498, 554 N.E.2d 433, 196 Ill.App.3d 772.—Tax 1100.

MATHEMATICAL ERRORS

S.D.Miss. 1958. Where taxpayers filed income tax return and paid all taxes due and owing and court determined that the taxpayers had underpaid estimated tax, assessment of an addition to the tax was a "deficiency" within the statute making it mandatory that collector issue a 90-day letter granting an appeal to Tax Court prior to making of any assessment and did not involve mere "mathematical errors" so as to relieve the collector from the restrictions on assessment of the tax contained in the statute. 26 U.S.C.A. (I.R.C.1954) §§ 6212, 6213(a), 6654, 6659.—Muse v. Enochs, 164 F.Supp. 561, affirmed 270 F.2d 528.—Int Rev 4543.

MATHEMATICAL IMBALANCE

C.A.Fed. 1990. "Mathematical imbalance" occurs in public contract bid if each bid item fails to carry its share of cost of work (or supplies) plus bidder's profit/overhead or if bid is based upon nominal prices for some items and enhanced prices for others.—SMS Data Products Group, Inc. v. U.S., 900 F.2d 1553.—Pub Contr 5.1.

MATHEMATICALLY UNBALANCED BID

Fed.Cl. 1999. A "mathematically unbalanced bid" on a government contract is one based on "prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work"; whether a bid is mathematically unbalanced is determined by comparing the bidder's prices to the government's estimates.—Anderson Columbia Environmental, Inc. v. U.S., 43 Fed.Cl. 693.—U S 64.30.

MATHEMATICAL UNCERTAINTY

Okla. 1979. The term "mathematical certainty" as used in the statute relating to an election contest is ascertainable only by "mathematical computation"; if, by use of simple arithmetic, person "A" receives more votes than person "B," it is mathematically certain that person "A" won the election; if, however, the number of so-called disputed votes exceeds the numerical margin by which one candidate is shown to have won over the other candidate, exclusive of the disputed votes, then "mathematical uncertainty" is shown to exist. 26 O.Supp.1974, § 8-120.—Helm v. State Election Bd., 589 P.2d 224, 1979 OK 4.—Elections 295(1).

MATHEMATICAL VERIFIABILITY

C.A.Fed. 1995. "Mathematical verifiability" of income tax return requires sufficient information to permit IRS to recalculate and corroborate mathematics and data reported by taxpayer without undue burden on IRS. 26 U.S.C.A. § 6611(h)(2)(B)(ii).—Columbia Gas System, Inc. v. U.S., 70 F.3d 1244.—Int Rev 4477.

MATHES AND DEVITT INSTRUCTION

C.A.6 (Ohio) 1967. The "Mathes and Devitt Instruction" is that an injury or damage is proximately caused by an act, or failure to act, whenever it appears, from a preponderance of the evidence in the case, that the act or omission played any part, no matter how small, in bringing about or actually causing the injury or damage, and that if jurors should find that any negligence of railroad contributed in any way or manner toward any injury or damage suffered by its employee, jurors might find that the injury or damage was proximately caused by railroad's act or omission. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—Tyree v. New York Cent. R. Co., 382 F.2d 524, certiorari denied 88 S.Ct. 589, 389 U.S. 1014, 19 L.Ed.2d 659.—Emp Liab 267.

MATHEWS V. ELDRIDGE

N.J. 1996. Under the "Mathews v. Eldridge" to determine protections needed to ensure due process, court must consider private interest that will be affected by official action, risk of erroneous deprivation of that interest through the procedures used and probable value of additional or substitute procedural safeguards, and government's interest, including function involved and fiscal and administrative burdens that additional or substitute procedural requirement would entail. U.S.C.A. Const.

Amend. 14.—Matter of C.A., 679 A.2d 1153, 146 N.J. 71.—Const Law 251.5.

MATRICES

N.Y.Sup. 1920. Combination of defendant newspaper publishers to refuse to furnish plaintiff publisher with “mats” or “matrices” made by defendants, for use by plaintiff in the publication of the advertisements for which they were made, *held* not to entitle plaintiff to injunctive relief; plaintiff having no legal right to the “mats,” even though he had been furnished them in the past, and a “mat” not being a “commodity of common use,” within General Business Law, § 340, relating to monopolies in the manufacture, production, and sale of such commodities.—Finnegan v. Butler, 182 N.Y.S. 671, 112 Misc. 280.—Monop 13.

MATRICULATED

C.A.10 (Colo.) 1995. Chapter 7 debtor ceased to be “matriculated” at college when he graduated with his M.B.A. in January, 1983, even though he continued to attend college on part time basis until 1990, and thus, loans became “due” in 1983, for purposes of Bankruptcy Code section permitting student loans to be discharged if they first become due more than seven years before bankruptcy filing; notes stated that repayment would begin at the end of the ninth month following the month in which the debtor ceased to be matriculated, withdrew from, or became less than half time student at approved school, or on date debtor failed to enroll for term, and debtor was not enrolled in degree program after he obtained M.B.A. Bankr.Code, 11 U.S.C.A. § 523(a)(8).—In re Woodcock, 45 F.3d 363, certiorari denied Woodcock v. Chemical Bank, 116 S.Ct. 97, 516 U.S. 828, 133 L.Ed.2d 52, appeal after remand 104 F.3d 368, on remand 212 B.R. 658, affirmed 144 F.3d 1340, certiorari denied 119 S.Ct. 811, 525 U.S. 1075, 142 L.Ed.2d 671.—Bankr 3351.5.

C.A.3 (Pa.) 1991. Under Pennsylvania law, medical student “matriculated” at medical college, even though student was not billed for nor paid any fees or tuition, where student applied and was accepted as candidate for M.D. degree, attended orientation, registered for and attended classes for four days, signed college’s honor code, and completed personal data form and filed it with registrar, obtained locker and mailbox and had picture taken for student ID card.—Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368, on remand 1991 WL 83112.—Colleges 9.15.

Bkrty.D.Colo. 1993. “Matriculated,” within meaning of notes providing that debtor would begin to repay student loan nine months after he ceased to be “matriculated,” meant that debtor only had to be enrolled in college, as opposed to being enrolled and working towards degree.—In re Woodcock, 149 B.R. 957, appeal decided 45 F.3d 363, certiorari denied Woodcock v. Chemical Bank, 116 S.Ct. 97, 516 U.S. 828, 133 L.Ed.2d 52, appeal after remand 104 F.3d 368, on remand 212 B.R. 658, affirmed 144 F.3d 1340, certiorari denied 119 S.Ct. 811, 525 U.S. 1075, 142 L.Ed.2d 671.—Colleges 9.25(2).

MATRICULATED FULL-TIME STUDENT

N.Y.A.D. 2 Dept. 1992. Evidence did not show that parties’ child was “matriculated full-time student” at time of his 21st birthday, and thus, father’s child support obligation ceased on that day under separation agreement requiring father to continue child support beyond 21st birthday in event that child was matriculated in full-time course of study; child merely enrolled in college on eve of his 21st birthday, and his first semester did not begin until ten days after his 21st birthday.—Lawrence v. Lawrence, 579 N.Y.S.2d 162, 180 A.D.2d 619.—Hus & W 279(1).

MATRICULATED STUDENT

W.D.Va. 1969. Student who had resigned and applied for and was waiting to be granted readmission to another, later term at college and who was not in college at time in question was not a “matriculated student”.—Saunders v. Virginia Polytechnic Institute, 307 F.Supp. 326, reversed 417 F.2d 1127.—Colleges 9.15.

MATRICULATION

Ga. 1934. Prohibition on tuition fees in units of university system held not to prevent Board of Regents from charging reasonable “matriculation,” laboratory, hospital, and athletic fees to students in such institutions (Const. art. 8, § 1, as amended in 1911; Civ.Code 1926, §§ 1551(8), 1551(118), and §§ 1552–1562(12); Civ.Code 1910, §§ 1552, 1560; Laws 1931, pp. 20, 23, 27, §§ 47, 55, 74).—State v. Regents of University System of Georgia, 175 S.E. 567, 179 Ga. 210.—Colleges 9.20(1).

MATRIMONIAL ACTION

N.J.Super.A.D. 1962. In wife’s action to specifically enforce separation agreement, award of counsel fee was not improper because wife’s attorney had already been awarded a sum pendente lite in divorce action and another sum at time of judgment nisi, where counsel fee involved in divorce action had nothing to do with allowance for prosecuting cross-claim for specific performance, and cross-claim was a “matrimonial action” within statute providing for fees in matrimonial actions. R.R. 4:55–7(a), 4:93–2(a).—Equitable Life Assur. Soc. of U.S. v. Huster, 183 A.2d 473, 75 N.J.Super. 492.—Spec Perf 134.

N.J.Super.A.D. 1954. Action by divorced wife to recover arrearages due for support and maintenance under foreign divorce judgment was not “matrimonial action” so as to entitle wife to counsel fees. R.R. 4:55–7(a).—Lea v. Lea, 108 A.2d 303, 32 N.J.Super. 333, affirmed 112 A.2d 540, 18 N.J. 1.—Hus & W 205(6).

N.J.Super.A.D. 1951. Action by divorced wife in New Jersey against divorced husband to recover arrearages for alimony due under Nevada divorce decree was not a “matrimonial action” so as to entitle divorced wife to counsel fees. R.R. 4:93–2(a).—Whitehead v. Villapiano, 84 A.2d 731, 16 N.J.Super. 415.—Hus & W 205(6).

N.Y. 1992. Under Domestic Relations Law, "matrimonial action" does not include separation action and, therefore, commencement of action for separation would not terminate period for accrual of "marital property"; economic partnership should be considered dissolved when matrimonial action is commenced which seeks divorce, dissolution, annulment or declaration of nullity of marriage, i.e., action in which equitable distribution is available. McKinney's DRL § 236, Pt. B, subd. 1, par. c.—Anglin v. Anglin, 592 N.Y.S.2d 630, 80 N.Y.2d 553, 607 N.E.2d 777.—Divorce 252.3(1); Hus & W 286.

N.Y. 1912. An action by a wife to set aside those provisions of a separation agreement between her and her husband, which fixed the amount of her maintenance, is not a "matrimonial action," or in the nature of a "matrimonial action," so as to permit the allowance of counsel fees to plaintiff pending suit, when she asks no further relief.—Johnson v. Johnson, 100 N.E. 408, 206 N.Y. 561, Am. Ann. Cas. 1914B, 407.

N.Y.A.D. 1 Dept. 1992. Marital property had to be valued, for purpose of equitable distribution on couple's divorce, based on its value as of date that divorce action was filed, and not as of earlier date that wife commenced her separation action; separation action was not "matrimonial action," for purpose of rule providing that marital property should be valued as of date of commencement of matrimonial action.—Match v. Match, 583 N.Y.S.2d 224, 179 A.D.2d 124.—Divorce 253(3).

N.Y.A.D. 1 Dept. 1965. First husband's action for declaratory judgment as to whether his obligation under separation agreement was revived after former wife's marriage had been determined to be void because second husband's divorce from the latter's first wife had been nullified was not a "matrimonial action" within CPLR Rule which forbids granting of summary judgment to plaintiff in matrimonial actions. CPLR Rule 3212 and (d).—Denberg v. Frischman, 264 N.Y.S.2d 114, 24 A.D.2d 100, affirmed 270 N.Y.S.2d 627, 17 N.Y.2d 778, 217 N.E.2d 675, reargument denied 272 N.Y.S.2d 1027, 17 N.Y.2d 918, 218 N.E.2d 920, motion to amend remittitur denied 17 N.Y.2d 919, certiorari denied 87 S.Ct. 176, 385 U.S. 884, 17 L.Ed.2d 111.—Judgm 180.

N.Y.A.D. 1 Dept. 1962. Although wife's attack on waiver provisions of separation agreement could be joined with cause for separation for convenience of adjudication between same parties, it remained action for equitable relief and not a "matrimonial action" within Civil Practice Act provisions providing for counsel fees and expenses. Civil Practice Act, § 1169.—Stahl v. Stahl, 234 N.Y.S.2d 979, 18 A.D.2d 617.—Divorce 221.

N.Y.A.D. 1 Dept. 1958. Husband's action for judgment declaring separation agreement void was not a "matrimonial action," within purview of Civil Practice Act section, and where separation agreement, of which wife's attorney had knowledge and whose validity and enforceability was defended by wife in action, expressly provided that she waived "future counsel fees for any purpose", and there

was no basis for finding that legal services had been rendered as necessities for wife, it was error to award counsel fees to attorney for wife. Civil Practice Act, § 1169.—Marson v. Marson, 175 N.Y.S.2d 82, 6 A.D.2d 786, stay denied 176 N.Y.S.2d 925, 5 A.D.2d 982, reargument denied 181 N.Y.S.2d 166, 7 A.D.2d 719, reargument denied 181 N.Y.S.2d 166, 7 A.D.2d 719, appeal dismissed 188 N.Y.S.2d 550, 6 N.Y.2d 844, 160 N.E.2d 85, affirmed 190 N.Y.S.2d 998, 6 N.Y.2d 925, 161 N.E.2d 212.—Hus & W 205(6).

N.Y.A.D. 1 Dept. 1919. Court has no jurisdiction of husband's action to require court, "according to the course and practice of this court in matrimonial actions," to fix amount to be paid wife pursuant to separation agreement providing for modification thereof by court on change in circumstances of parties; such action not being a "matrimonial action," under Code Civ. Proc. §§ 1742-1767, and the agreement being an attempt to confer upon court jurisdiction not vested in it by law.—Stoddard v. Stoddard, 175 N.Y.S. 636, 187 A.D. 258, affirmed 124 N.E. 91, 227 N.Y. 13.—Courts 24.

N.Y.A.D. 2 Dept. 1981. Wife's counterclaim, which was filed in husband's divorce action and which was stated to be "IN THE NATURE OF A SPECIAL PROCEEDING FOR SUPPORT AND MAINTENANCE," was not a "matrimonial action" and was not for the same or substantially the same relief demanded in wife's action for divorce on grounds of adultery and abandonment, and, thus, the counterclaim could not be considered "another action pending" between the same parties for the same cause of action so as to justify dismissal of wife's cause of action for divorce. CPLR 3211(a), par. 4.—Berger v. Berger, 443 N.Y.S.2d 181, 84 A.D.2d 545.—Divorce 82.

N.Y.A.D. 2 Dept. 1977. Action for declaratory judgment adjudicating nullity of foreign judgment of divorce is included within term "matrimonial action," as that term is defined by statute. CPLR 105(o).—Carr v. Carr, 400 N.Y.S.2d 105, 60 A.D.2d 63, reversed 413 N.Y.S.2d 305, 46 N.Y.2d 270, 385 N.E.2d 1234.—Decl Judgm 93.

N.Y.A.D. 3 Dept. 2002. "Matrimonial action" in statute defining marital property as all property acquired by spouses during marriage and before commencement of matrimonial action does not include an action which, by virtue of a dismissal or discontinuance, neither terminates the marriage nor results in the equitable distribution of the parties' property. McKinney's DRL § 236, Pt. B, subd. 1, par. c.—O'Connell v. O'Connell, 736 N.Y.S.2d 728, 290 A.D.2d 774, leave to appeal granted 753 N.Y.S.2d 806, 99 N.Y.2d 503, 783 N.E.2d 896.—Divorce 252.3(1).

N.Y.A.D. 3 Dept. 1992. A prior separation action was not a "matrimonial action," the commencement of which would become cut off point for classification of spousal assets as marital property subject to equitable distribution upon divorce. McKinney's DRL § 236, Pt. B, subds. 1, 1, par. c. 2.—Anglin v. Anglin, 577 N.Y.S.2d 963, 173 A.D.2d

133, affirmed 592 N.Y.S.2d 630, 80 N.Y.2d 553, 607 N.E.2d 777.—Divorce 252.3(1).

N.Y.A.D. 4 Dept. 2002. Prior divorce action that was dismissed was not a "matrimonial action" within meaning of statutory provisions defining marital property and setting dates for valuation of assets, and proper valuation date for wife's college and medical degrees, portions of which were marital property subject to equitable distribution, was date current divorce action was commenced; prior action neither ended the marriage nor resulted in equitable distribution of property. McKinney's DRL § 236, Pt. B, subd. 1, par. c., subd. 4, par. b.—Cozza v. Colangelo, 747 N.Y.S.2d 641, 298 A.D.2d 914.—Divorce 253(3).

N.Y.A.D. 4 Dept. 1945. A wife's action to rescind, modify or declare void a separation agreement as not providing adequate provision for support of wife and child was not a "matrimonial action", hence there was no authority for allowance of counsel fees to wife. Domestic Relations Law, § 51, as amended.—Carlson v. Carlson, 53 N.Y.S.2d 735, 269 A.D. 21, reargument denied 54 N.Y.S.2d 927, 269 A.D. 732.—Hus & W 279(2).

N.Y.Sup. 1985. "Matrimonial action," commencement of which effectively stops accumulation of marital property did not include a separation action, thus permitting property accumulated following a separation to be considered marital for divorce distribution since statute defining "matrimonial actions" excludes those in which marital property is divided. McKinney's DRL § 236, Pt. B, subds. 1, pars. c, d, 2.—Petre v. Petre, 496 N.Y.S.2d 335, 130 Misc.2d 333, affirmed 505 N.Y.S.2d 396, 122 A.D.2d 559.—Divorce 252.3(1).

N.Y.Sup. 1966. A "matrimonial action" includes one for annulment. CPLR § 105(m).—Gelep v. Gelep, 275 N.Y.S.2d 68, 52 Misc.2d 64.—Marriage 57.

N.Y.Sup. 1962. Action for declaration of marital status between plaintiff and alleged husband, invalidity of husband's alleged divorce, and invalidity of marriage between alleged husband and second defendant, was a "matrimonial action", within which plaintiff was not entitled to general pre-trial examination of second defendant. Rules of Civil Practice, rule 121-a.—Goldberg v. Goldberg, 223 N.Y.S.2d 820, 33 Misc.2d 18.—Pretrial Proc 94.

N.Y.Sup. 1953. Wife's action against husband for arrears in payments of support money provided for in separation agreement, and for judgment directing him to assign to her a specified interest in group insurance policy, in accordance with agreement, was based solely upon a contractual obligation, and was not a "matrimonial action" in which court could award alimony to wife. Civil Practice Act, § 1172.—Erden v. Erden, 120 N.Y.S.2d 330.—Hus & W 205(6).

N.Y.Sup. 1944. An action is a "matrimonial action" so as to warrant award of counsel fees and alimony to wife if it seeks a determination of the marital status of the parties and is brought or defended in an endeavor to sustain or prevent the

destruction of such marital status.—Kraunz v. Kraunz, 51 N.Y.S.2d 433, 183 Misc. 724.—Hus & W 205(6).

N.Y.Sup. 1939. An action for declaratory judgment that plaintiff was divorced from defendant was a "matrimonial action" in which counterclaim seeking divorce could be interposed. Civil Practice Act, §§ 473, 1168; Rules of Civil Practice, rules 109, 212.—Kiebler v. Kiebler, 9 N.Y.S.2d 909, 170 Misc. 81.—Decl Judgm 322.

MATRIMONIAL ACTIONS

N.Y.A.D. 1 Dept. 1915. An advertisement inserted in a newspaper by an attorney, wherein was the statement "Matrimonial Actions a Specialty," is a violation of Penal Law, Consol.Laws, c. 40, § 120, now § 1452, declaring advertising to procure divorces a misdemeanor, since, in common parlance, the words "matrimonial actions" mean actions for divorce.—In re Neuman, 155 N.Y.S. 428, 169 A.D. 638.

MATRIMONIAL AGREEMENT

Tex.Civ.App.—Dallas 1919. Rev.St.1911, art. 4618, Vernon's Ann.Civ.St. art. 4611, providing that every "matrimonial agreement" must be acknowledged before some officer and attested by at least two witnesses, held not to govern deeds executed before marriage by a husband to his future wife to settle on her a portion of the property of which he was absolutely possessed, in consideration of her marrying, the property to be her separate estate for life, to revert to him if she died without issue, but if she had issue to go to her heirs.—Runge v. Freshman, 216 S.W. 254.—Hus & W 29(7).

MATRIMONIAL COHABITATION

Ala. 1898. "Matrimonial cohabitation" means the living together of a man and woman ostensibly as husband and wife, and from such cohabitation sexual intercourse is presumed.—Cox v. State, 23 So. 806, 117 Ala. 103, 67 Am.St.Rep. 166, 41 L.R.A. 760.

N.Y.Dom.Rel.Ct. 1938. "Matrimonial cohabitation" is the living together of a man and woman ostensibly as husband and wife.—Denny v. Denny, 6 N.Y.S.2d 881.—Marriage 22.

Tex.Civ.App.—Fort Worth 1943. To constitute "matrimonial cohabitation" which will give rise to a common-law marriage, under Oklahoma law, parties must have the same habitation.—McArthur v. Hall, 169 S.W.2d 724, writ refused w.o.m.—Marriage 22.

Utah Terr. 1885. "Matrimonial cohabitation," as used in distinction from "matrimonial intercourse," signifies a living together in the same house without copulation.—U.S. v. Musser, 7 P. 389, 4 Utah 153.

Va. 1986. The term "matrimonial cohabitation" consists of not only sexual relations but also the continuing condition of living together and carrying out the mutual responsibilities of the marital rela-

tionship.—*Petachenko v. Petachenko*, 350 S.E.2d 600, 232 Va. 296.—Divorce 37(2).

MATRIMONIAL DOMICIL

N.J. 1954. "Matrimonial domicil" exists when marriage partners have present intention to establish bona fide habitation for unlimited and indefinite period, permanent, rather than temporary, animus manendi and animus non revertendi.—*Zieper v. Zieper*, 103 A.2d 366, 14 N.J. 551.—Domicile 4(2).

MATRIMONIAL DOMICILE

Ala. 1929. Place where parties live together as husband and wife actually or constructively is "matrimonial domicile."—*Ex parte Allan*, 125 So. 612, 220 Ala. 482.—Hus & W 289.

Cal.App. 4 Dist. 1947. "Matrimonial domicile" is the place where a husband and wife have established a home, in which they reside in the relation of husband and wife, and is the place where the marital contract is being performed.—*Patterson v. Patterson*, 187 P.2d 113, 82 Cal.App.2d 838.—Hus & W 3(1).

Cal.App. 4 Dist. 1947. Statement in Nevada court's judgment granting husband a divorce, that the "matrimonial domicile" of the parties "has been and now is" in California, was directly contrary to statement that husband was a resident in good faith of Nevada, and therefore reference to matrimonial domicile was disregarded by California court in wife's subsequent action for separate maintenance.—*Patterson v. Patterson*, 187 P.2d 113, 82 Cal.App.2d 838.—Divorce 361.

Neb. 1941. Where wife is deserted by husband without justification, "matrimonial domicile" stays with the wife, the innocent party, and she may in consequence acquire a new domicile, which may become the matrimonial domicile.—*Anglim v. Anglim*, 299 N.W. 346, 140 Neb. 133.

N.Y.A.D. 1 Dept. 1922. While a man can have but one domicile, it does not necessarily follow that he and his wife may not establish a different matrimonial domicile, the courts of which have jurisdiction of an action for divorce for the commission of an offense therein; "matrimonial domicile" being the place where a husband and wife have established a home, in which they reside in the relation of husband and wife, and where the matrimonial contract is being performed.—*Gould v. Gould*, 194 N.Y.S. 745, 201 A.D. 670, affirmed 138 N.E. 490, 235 N.Y. 14.—Divorce 62(1).

N.Y.Sup. 1980. Under statutory provision authorizing maintenance of an action for divorce when parties have resided in state as husband and wife and either party is a resident thereof when action is commenced and has been a resident for a continuous period of one year immediately preceding, it is not necessary that each party would have had to have an intent to make New York their "matrimonial domicile" in the traditional sense to support a finding that the parties have "resided in this State as husband and wife." Domestic Rela-

tions Law § 230, subd. 2.—*Geiser v. Geiser*, 424 N.Y.S.2d 852, 102 Misc.2d 862.—Divorce 62(6).

N.Y.Sup. 1948. "Matrimonial domicile" of parties to divorce suit is place where they last lived together as husband and wife with intention to make it their fixed and permanent home.—*Ruderman v. Ruderman*, 82 N.Y.S.2d 479, 193 Misc. 85, affirmed 89 N.Y.S.2d 894, 275 A.D. 834.—Divorce 62(6).

N.Y.Sup. 1943. Residence in fact, coupled with the purpose to make the place of residence one's home, are the essential elements of "domicile", and personal "residence" can exist distinct from a "matrimonial domicile" and a person may have several residences, but only one domicile.—*Reese v. Reese*, 40 N.Y.S.2d 468, 179 Misc. 665, affirmed 51 N.Y.S.2d 685, 268 A.D. 993.—Domicile 1, 2.

N.Y.Sup. 1917. Where defendant, without justification and with no intention that his wife should follow him, went to another state for the sole purpose of securing a divorce, a divorce there secured by constructive service was invalid, and would not bar an action of divorce by the wife, as a "matrimonial domicile" is the place where the parties live together as husband and wife, either actually or constructively, and cannot be acquired even constructively by the separation of one party from the other with the clear and avowed intention to sever matrimonial relations, even though justified.—*Rontey v. Rontey*, 166 N.Y.S. 818, 101 Misc. 166.

N.Y.Sur. 1966. "Matrimonial domicile" is the domicile of husband, from moment of marriage until matrimonial unit is dissolved.—*In re Crichton's Will*, 267 N.Y.S.2d 706, 49 Misc.2d 405, affirmed *Crichton's Will*, 272 N.Y.S.2d 987, 26 A.D.2d 639, affirmed *In re Crichton's Estate*, 281 N.Y.S.2d 811, 20 N.Y.2d 124, 228 N.E.2d 799, affirmed 272 N.Y.S.2d 987, 26 A.D.2d 639, appeal granted 276 N.Y.S.2d 1025, 18 N.Y.2d 581, 222 N.E.2d 745, affirmed 281 N.Y.S.2d 811, 20 N.Y.2d 124, 228 N.E.2d 799.—Domicile 5.

N.Y.Dom.Rel.Ct. 1941. The place where the marriage contract is being performed and the husband and wife have established a home in which they reside in the relation of husband and wife, is the "matrimonial domicile".—*Smith v. Smith*, 29 N.Y.S.2d 469, affirmed 35 N.Y.S.2d 725, 264 A.D. 769.—Domicile 1.

N.Y.Dom.Rel.Ct. 1941. Since the "matrimonial domicile" is a place where the matrimonial contract is being performed, one party to the contract may abandon the relation and leave the jurisdiction, but the res remains in the place where the contract was last performed.—*Smith v. Smith*, 29 N.Y.S.2d 469, affirmed 35 N.Y.S.2d 725, 264 A.D. 769.—Domicile 4(1).

N.Y.Dom.Rel.Ct. 1940. The "matrimonial domicile," for purpose of determining jurisdiction of court to grant divorce decree, is not determined by place where marriage takes place, nor does it continue through life of parties once it has been established in a given place, but it may be changed from

time to time as result of change of employment, economic need, health, convenience, and desire, and, with a change of matrimonial domicile, judicial jurisdiction over the matrimonial res also changes.—*Gill v. Gill*, 18 N.Y.S.2d 114.—*Divorce* 62(1).

N.Y.Dom.Rel.Ct. 1940. Where one spouse abandons other spouse, abandoned spouse may establish a "matrimonial domicile," for purpose of giving court jurisdiction to grant divorce, elsewhere than jurisdiction in which abandonment occurred.—*Gill v. Gill*, 18 N.Y.S.2d 114.—*Divorce* 64.

MATRIMONIAL INTERCOURSE

Utah Terr. 1885. "Matrimonial cohabitation," as used in distinction from "matrimonial intercourse," signifies a living together in the same house without copulation.—*U.S. v. Musser*, 7 P. 389, 4 Utah 153.

MATRIMONIAL MATTER

N.J.Super.Ch. 1954. In action against husband, wife's complaint, which sought alimony and maintenance upon charge of simple abandonment of wife and judgment against husband for amount of arrearages of alimony, support, and maintenance due wife under judgment which had been obtained by her in New York, together with interest and costs, alleged a "matrimonial matter". R.R. 4:93-2(a).—*Zino v. Zino*, 108 A.2d 888, 32 N.J.Super. 611.—*Hus & W* 286.

MATRIMONIAL RES

Me. 1940. The marriage state is frequently referred to as the "matrimonial res."—*Usen v. Usen*, 13 A.2d 738, 136 Me. 480, 128 A.L.R. 1449.

MATRIMONY

Ind.App. 2 Div. 1907. "Matrimony" contemplates a mutual performance of the correlate duties which the law superinduces upon the marriage, and while one does his part, the other is not authorized to withdraw and live in separation.—*Massey v. Massey*, 81 N.E. 732, 40 Ind.App. 407.

MATRIX

C.A.5 (Fla.) 1960. Where hardrock phosphate when mined was found in form of a "matrix," that is, a frame or block of hard phosphate with openings filled with sand, clay, and soft particles of phosphate, and sand, clay, and soft particles of phosphate were washed away from matrix in cleaning process and were discharged onto ground or into natural watercourses, and soft particles of phosphate accumulated as colloidal phosphate usually a quarter to a half a mile from mining activity, and years later it was discovered that colloidal phosphate had commercial value as fertilizer, and taxpayer and others searched for and found colloidal phosphate, removed overburden, and dug up colloidal phosphate and bagged it for commercial use, taxpayer's activities did not come within depletion provisions of the Internal Revenue Code authorizing allowance for depletion in case of

"mines," "natural deposits," and "phosphate rock." 26 U.S.C.A. (I.R.C.1939) §§ 23(m), 114(b)(3, 4).—*Soil Builders, Inc. v. U.S.*, 277 F.2d 570.—*Int Rev* 3487.

E.D.Pa. 1942. A "matrix" is a metal mold containing a negative of a character into which molten type is forced to create a single piece of type.—*American Type Founders v. Lanston Monotype Mach. Co.*, 45 F.Supp. 531, affirmed 137 F.2d 728.

Ala.Civ.App. 1996. Incident to filing bankruptcy petition, debtor is required to file "matrix," or list, of creditors with the bankruptcy court, which allows the bankruptcy court or the debtor to provide notice by mail to all creditors.—*John Deere Co. v. Blevins*, 696 So.2d 1080.—*Bankr* 2324.

MATRON

Mich. 1915. An affidavit of consent to the adoption of a child which avers that affiant is a "matron" of a hospital, and the only person having the control of the child, and lawfully entitled to give consent to its adoption, and that she executes the instrument giving consent in writing to adoption, held, by equally divided court, a substantial compliance with Comp.Laws, § 8777, requiring the consent of the principal officer of any incorporated hospital, asylum, or home of which the child may be an inmate to justify the probate court in entering an order of adoption; the word "matron" meaning the head of any institution.—*Fisher v. Gardnier*, 150 N.W. 358, 183 Mich. 660.

N.J.Sup. 1932. Matron of county jail, in charge of female inmates, and employed under supervision of sheriff in second-class county, held "jail keeper," and entitled to same compensation as court attendants of such county. This is so because in N.J.S.A. 30:8-11, 18, regarding sheriff's appointment of keepers and assistants and their compensation, and providing such assistants should be known as jail keepers, whether engaged in the keeping of such jail as "jailers, keepers, jail guards or by any other title," words "jailors, keepers and jail guards," did not call for a construction which would eliminate the words "or by any other title," and confine the statute only to the persons named, and because the matron was actually one of the keepers of the county jail, since N.J.S.A. 30:8-11, provides that she should act as a keeper; it being likely that the word "matron" was used instead of "keeper" or "jail keeper" to distinguish her from those of the opposite sex.—*Roff v. Passaic County*, 162 A. 720, 10 N.J.Misc. 1133.

MATRONS

Mo. 1959. Under the St. Louis Act fixing maximum police force and salaries by classes, "matrons" who performed duties in the women's cell block were police personnel and were not properly employed as "clerks and subordinates," but the city should have paid those who were performing clerical duties exclusively. Sections 84.100, 84.150, 84.190 RSMo 1949, V.A.M.S.—*State ex rel. Priest v. Gunn*, 326 S.W.2d 314.—*Mun Corp* 186(5).

MATS

N.Y.Sup. 1920. In newspaper publisher's action to enjoin proprietors and managers of other papers from combining and conspiring to create a combination or monopoly in the production or sale of newspapers, advertising therein, "mats," etc., so as to injure plaintiff's business, a temporary injunction will not be issued, unless plaintiff has shown in the motion papers at least a prima facie case that a combination exists, that it tends to create a monopoly in an article or commodity of common use, or is intended to injure plaintiff in his business, or that the acts complained of will cause the plaintiff injury.—*Finnegan v. Butler*, 182 N.Y.S. 671, 112 Misc. 280.—Inj 145.

N.Y.Sup. 1920. Combination of defendant newspaper publishers to refuse to furnish plaintiff publisher with "mats" or "matrices" made by defendants, for use by plaintiff in the publication of the advertisements for which they were made, held not to entitle plaintiff to injunctive relief; plaintiff having no legal right to the "mats," even though he had been furnished them in the past, and a "mat" not being a "commodity of common use," within General Business Law, § 340, relating to monopolies in the manufacture, production, and sale of such commodities.—*Finnegan v. Butler*, 182 N.Y.S. 671, 112 Misc. 280.—Monop 13.

MATTER

U.S. Armed Forces 1999. Accused's possession, on one computer hard drive, of 126 images depicting minors engaging in various sex acts, did not satisfying requirement, for conviction of possessing child pornography, of knowing possession of "3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction" of child pornography; computer hard drive was single "matter." 18 U.S.C.A. § 2252.—*U.S. v. Falk*, 50 M.J. 385, reconsideration granted in part 52 M.J. 451.—Mil Jus 790.

C.G.Ct.Crim.App. 1996. While video tape has certain attributes that are similar to personal "live" appearance of accused before convening authority, personal appearance does not qualify as "matter" as used in statute permitting accused to submit "matters" for convening authority's consideration prior to taking action. UCMJ, Art. 60(b)(1), 10 U.S.C.A. § 860(b)(1).—*U.S. v. Haire*, 44 M.J. 520, review denied 46 M.J. 111.—Mil Jus 1393.1.

C.A.Fed. 1986. The Department of Army's reassignment of civilian employee pursuant to reduction in force was a "matter" within meaning of 5 U.S.C.A. § 7121(a)(2), which provides that collective bargaining agreement may exclude any matter from application of grievance procedures which are provided for in agreement, and thus, if collective bargaining agreement did exclude underlying reduction in force, then such action was not a matter covered by negotiated grievance procedure and the Merit Systems Protection Board would retain its customary appellate jurisdiction over appeal from reduction-in-force action. 5 U.S.C.A. § 7121.—*Bonner v. Merit Systems Protection Bd.*, 781 F.2d 202.—Offic 72.22.

C.A.Fed. 1984. Civilian guards' application for Equal Access to Justice Act fees and expenses and their suit to recover overtime pay constituted one "matter" for purposes of transitional provision of Federal Courts Improvement Act of 1982, and thus Claims Court had jurisdiction to entertain the application for fees. 28 U.S.C.A. §§ 171, 172, 451, 1920, 2412; Federal Courts Improvement Act of 1982, § 403(d), 28 U.S.C.A. § 171 note.—*Alger v. U.S.*, 741 F.2d 391.—Fed Cts 1079.

C.A.7 (Ill.) 1998. Computer files containing child pornography constituted "matter" within meaning of statute prohibiting knowing possession of matter, transported in interstate commerce, which contains visual depictions of minors engaged in sexually explicit conduct. 18 U.S.C.A. § 2252(a)(4)(B).—*U.S. v. Hall*, 142 F.3d 988.—Obscen 5.2.

C.A.9 (Wash.) 1997. "Matter", as used in statute that prohibits knowing possession of 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction of minor engaging in sexually explicit conduct, means physical medium that contains visual depiction, such as computer and disks. 18 U.S.C.A. § 2252(a)(4)(B).—*U.S. v. Lacy*, 119 F.3d 742, certiorari denied 118 S.Ct. 1571, 523 U.S. 1101, 140 L.Ed.2d 804.—Obscen 5.1.

C.D.Cal. 1984. Under Model Rule of Professional Conduct generally prohibiting former government attorney from representing private client in connection with matter in which he participated personally and substantially as public officer or employee, "matter" includes discrete, identifiable transactions or conduct involving particular situation and specific parties. Cal.Prof.Conduct Rule 1.11(a).—*Securities Investor Protection Corp. v. Vigman*, 587 F.Supp. 1358.—Atty & C 21.5(2).

E.D.Cal. 1994. Within statute providing that aggrieved federal employee affected by prohibited personnel action may raise matter under statutory procedure or negotiated procedure, but not both, "matter" in case in which terminated female employees complained of sex discrimination in connection with reduction in force (RIF) was the termination rather than the discrimination claim, and thus where employees chose grievance route, they could not thereafter file an Equal Employment Opportunity (EEO) complaint regardless of whether grievances alleged unlawful discrimination. 5 U.S.C.A. § 7121(d).—*Macy v. Dalton*, 853 F.Supp. 350.—Labor 416.8.

D.D.C. 1984. Rule-making and policy-making activities do not constitute a "matter" within meaning of disciplinary rule for purposes of disqualifying counsel from private lawsuit by reason of prior government service, and such activities do not become such "matter" unless activity is narrow in scope and is confined to specified issues and identifiable parties such that it may be properly characterized as "quasi-judicial" in nature. D.C.Code of Prof.Resp., Canon 9; DR9-101(B); U.S.Dist.Ct. Rules D.D.C., Assignment and Calendaring, Rule 4-3(IV)(b); 18 U.S.C.A. § 207.—*Laker Airways*

Ltd. v. Pan American World Airways, 103 F.R.D. 22.—Att’y & C 21.5(2).

D.Md. 1955. Investigation by Federal Bureau of Investigation of report of alleged attempt to bribe officials of Federal Housing Administration was a “matter” within meaning of that term as used in statute proscribing false statements in matter within jurisdiction of federal department or agency. 18 U.S.C.A. § 1001.—U.S. v. Stark, 131 F.Supp. 190.—Fraud 68.10(3).

D.N.J. 1942. Where statute in effect at time of alleged commission of offense of unlawfully procuring naturalization established five-year limitation period during which indictment could properly be found but after commission of offense and before indictment was returned, Nationality Act was enacted containing a saving clause providing that nothing in the act should affect the validity of any “thing” or “matter” done or existing at the time the act took effect, the five-year limitation applied and the indictment returned within the five-year period was timely. 8 U.S.C.A. §§ 414, 415; Nationality Act of 1940, §§ 1, 301-347, 504, 8 U.S.C.A. §§ 907, 701-747, 904.—U.S. v. Vetrano, 47 F.Supp. 693.—Aliens 72.

S.D.N.Y. 1973. Where claim in United States 1956 suit alleging that bus manufacturer monopolized manufacture and sale of buses constituted aspect of city’s subsequent class action, but class action complaint alleged that manufacturer exercised monopoly power within last few years, and 1959 grand jury investigation was only of manufacturer’s locomotives, same “matter” was not involved in the respective proceedings, under ethical consideration and disciplinary rule forbidding private employment in matter in which attorney had substantial responsibility while a public employee, so as to render former Justice Department attorney’s involvement as counsel for city violative of such consideration and rule. Code of Professional Responsibility N.Y., Canon 9(EC9-3), (DR9-101), Judiciary Law Appendix; Sherman Anti-Trust Act, § 2, 15 U.S.C.A. § 2.—City of New York v. General Motors Corp., 60 F.R.D. 393, reversed 501 F.2d 639.—Att’y & C 21.5(2).

CIT 1989. Rule-making activity in which former assistant chief counsel for Customs Service was involved was insufficiently narrow to constitute “matter” within meaning of prohibition against acceptance of private employment in connection with a matter in which lawyer participated personally and substantially as public officer or employee, and, thus, former assistant chief counsel’s involvement with issue of whether or not to raise or tier bonded warehouse fees did not require disqualification of his law firm as counsel for plaintiffs challenging jump in fees and procedural manner in which they were tiered. ABA Rules of Prof.Conduct, Rule 1.11(e); ABA Code of Prof.Resp., DR 9-101(B).—National Bonded Warehouse Ass’n, Inc. v. U.S., 718 F.Supp. 967.—Att’y & C 21.5(2).

D.C. 1999. Contours of bombing of airplane over Scotland and government’s investigation and related responses to it were defined sharply enough

to constitute “matter” under disciplinary rule prohibiting lawyer from accepting other employment in connection with matter that is same as, or substantially related to, matter in which lawyer took part as public officer or employee. Rules of Prof.Conduct, Rule 1.11(a).—In re Sofaer, 728 A.2d 625, certiorari denied *Sofaer v. District of Columbia Court of Appeals*, 120 S.Ct. 1555, 529 U.S. 1053, 146 L.Ed.2d 460.—Att’y & C 44(1).

Fla.App. 1 Dist. 1957. Under rule limiting the scope of pretrial examination to “any matter not privileged which is relevant to the subject matter involving in the pending action”, the term “matter” does not contemplate unwarranted inquiries into the mental processes of counsel regarding his opinion or conclusions as to the law and theory applicable to his case. 30 F.S.A. Rules of Civil Procedure, rules 1.21(b), 1.27.—*Boucher v. Pure Oil Co.*, 101 So.2d 408.—Pretrial Proc 34.

Ga. 2000. Former Attorney General (AG) who represented garden club in action against Department of Transportation (DOT), challenging statutes governing issuance of permits for trimming vegetation and trees on rights-of-way to facilitate viewing of outdoor advertising signs, did not, while in office, participate in same “matter” within meaning of Code of Professional Responsibility, and thus, his representation of club did not violate pertinent ethical rules; even though AG office served as counsel for DOT in prior action by garden club in which predecessor regulations were struck down, deputy AG who had primary responsibility for case never discussed it with AG, AG’s offering of legal interpretations concerning predecessor regulations was merely part of his statutory duties, such opinions did not pertain to present legislation, and although AG commented on draft version of bill underlying present legislation, final legislation was not enacted until three months after AG resigned from office. O.C.G.A. §§ 32-6-75.1 to 32-6-75.3; Code of Prof.Resp., DR 9-101(B).—*Outdoor Advertising Ass’n of Georgia, Inc. v. Garden Club of Georgia, Inc.*, 527 S.E.2d 856, 272 Ga. 146, on subsequent appeal *Garden Club of Georgia v. Shackelford*, 560 S.E.2d 522, 274 Ga. 653, reconsideration denied.—Att’y Gen 7.

Ga. 1980. Investigation of criminal activities in county, including those of defendant, conducted by Bureau of Investigation under authorization from trial judge during his former tenure as district attorney was “matter” in which he “served as a lawyer” within meaning of canon providing for disqualification of trial judge, and “in which he has been of counsel” within meaning of statute providing for disqualification of judges; thus, trial judge should have disqualified himself in prosecution for bribery. Code of Judicial Conduct, Canon 3, subd. C(1); Code, § 24-102.—*King v. State*, 271 S.E.2d 630, 246 Ga. 386, 16 A.L.R.4th 545.—Judges 47(1).

Ind. 1901. In the constitutional provision that every act shall embrace but one subject and matters properly connected therewith, it is held that the words “subject” and “matter” are as nearly synonymous as it is possible for two English words to be, and that they both are used simply to avoid repeti-

tion; the only difference between them being created by the offices which they are respectively made to perform in the clause in question. It is quite evident, says the court, that the word "subject" is here used to indicate the chief thing about which a legislation is had; and "matters," the things which are secondary, subordinate, and incidental.—Clark v. Darr, 60 N.E. 688, 156 Ind. 692.

Ind.App. 2 Dist. 1978. Phrase "tangible personal property" within statute, which provides that gross retail tax shall not apply to "sales of * * * equipment to be directly used by the purchaser on the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining or refinishing of tangible personal property * * *," is not interchangeable with the scientific definition of "matter". IC 6-2-1-39(b)(6) (1976 Ed.)—Indiana Dept. of State Revenue, Sales Tax Division v. Cable Brazil, Inc., 380 N.E.2d 555, 177 Ind.App. 450, 5 A.L.R.4th 744.—Tax 1245.

Kan. 1954. Statute providing that "matter" contained in certain causes of contest shall not be sufficient to set aside election unless such causes be found sufficient to change result, quoted word is synonymous with "proof of facts". G.S.1949, 25-1412.—Whitson v. Roberts, 269 P.2d 1018, 176 Kan. 232.—Elections 298(3).

Kan. 1919. Under Gen.St.1915, § 484, authorizing attorney's lien on money due client in hands of adverse party in any "matter" in which attorney was employed and in any action or proceeding, the word "matter" means business or affair.—Carter v. Dunham, 177 P. 533, 104 Kan. 59.—Atty & C 182(1).

Mich. 1926. Testimony, that deceased requested local anesthetic, held admissible as against objection that it was "matter" equally within deceased's knowledge. Comp.Laws 1915, § 12553.—Bishop v. Shurly, 211 N.W. 75, 237 Mich. 76.—Witn 166.

Mo.App. 1975. "Matter" referred to in statute providing that accused may testify in his own behalf and shall be liable to cross-examination, as to any matter referred to in his examination in chief, means the things he testifies about. Section 546.260 RSMo 1969, V.A.M.S.—State v. Williams, 519 S.W.2d 576.—Witn 277(4).

N.M. 1991. "Matter," within meaning of statute extending Supreme Court's jurisdiction following certification to "matters" appealed to Court of Appeals, but undecided by that Court, means entire case in which appeal is taken. NMSA 1978, § 34-5-14, subd. C.—Collins on Behalf of Collins v. Tabet, 806 P.2d 40, 111 N.M. 391.—App & E 861.

N.Y. 1904. Code Civ.Proc. § 46, forbidding a judge to sit or take part in the decision of a "cause or matter" in which he has been an attorney or counsel, refers only to actions or special proceedings in which a judge might take part, the word "cause" meaning a cause of action, and the word "matter" referring to some judicial proceeding which, under the Code, is included in special proceedings for the enforcement of civil rights. Judge

(1903) Keefe v. Third Nat. Bank, 80 N.Y.S. 1138, 79 App.Div. 644, affirmed.—Keefe v. Third Nat. Bank, 69 N.E. 593, 177 N.Y. 305.—Judges 47(1).

N.Y.Sup. 1941. Under Education Law provisions regulating colleges of the City of New York under the jurisdiction of the Board of Higher Education as part of the school system of the state and provision authorizing state commissioner of education to decide an appeal made to him by any person conceiving himself aggrieved by any act or decision of school authorities or meetings concerning any other matter under the Education Law, action of Board of Higher Education of City of New York in removing an instructor at Brooklyn College having tenure was a "matter" which instructor had right to appeal to Commissioner of Education who had jurisdiction to hear and determine appeal. Education Law, §§ 883, 889-b, 890, subd. 7, 1142, 1143, 1143-c.—Board of Higher Education of City of New York v. Cole, 27 N.Y.S.2d 24, 176 Misc. 297, affirmed 31 N.Y.S.2d 176, 263 A.D. 777, reargument denied 32 N.Y.S.2d 1022, 263 A.D. 917, affirmed 42 N.E.2d 609, 288 N.Y. 607.—Colleges 8.1(5).

N.Y.Sup. 1927. Under Civil Practice Act, § 290, subd. 4, as amended by Laws 1923, c. 205, requiring notice of examination before trial to state matters on which defendant is to be examined, notice should specify in detail the facts on which defendant is to be examined, and notice merely stating that examination was sought "upon the issues in this action" was insufficient; general legal meaning of word "matter" being facts, or substance as distinguished from form or facts, constituting whole or part of a ground of action or defense.—Rubin v. Sheldon, 224 N.Y.S. 340, 130 Misc. 588.—Discov 54.

N.Y.Sup. 1914. "Cause" in legal terminology means an action, while the word "matter" may mean a special proceeding, or the subject of the controversy, commonly spoken of as the subject-matter.—Davis v. Seaward, 146 N.Y.S. 981, 85 Misc. 210, affirmed 156 N.Y.S. 242, 171 A.D. 963.

Or. 1908. An information for perjury charging that accused swore to "facts" stated in a complaint is not defective as charging the verification of the statements only; the term "facts" as so used meaning "matter" or "statements".—State v. Luper, 95 P. 811.—Perj 19(2).

Or.App. 2000. A motion to waive or defer fees in a civil case is a "matter," within meaning of statute disqualifying a judge from hearing any suit, action, matter, or proceeding if it is established that any party or attorney believes that such party or attorney cannot have a fair and impartial trial or hearing before such judge. ORS 14.250, 21.605(1)(a).—Voth v. Snake River Correctional Inst., 15 P.3d 629, 171 Or.App. 392.—Judges 51(1).

Or.App. 1999. Matters involving investor-owned utility's stranded costs during two in-house attorneys' representation of the utility were not the same "matter," within meaning of attorney professional responsibility rule governing matter-specific con-

licts of interest, as issues involving stranded costs that arose when the attorneys represented non-profit association of industrial consumers of utility services in proceedings before the Public Utility Commission (PUC) with respect to utility's merger with another utility and with respect to post-merger matters, where stranded costs were at least tangential to but not at the heart of the matters. Code of Prof.Resp., DR 5-105(C)(1).—Portland General Elec. Co. v. Duncan, Weinberg, Miller & Pembroke, P.C., 986 P.2d 35, 162 Or.App. 265.—Att'y & C 21.5(3).

Or.App. 1993. Question of whether payment of widow's benefits were stayed pending appeal of underlying compensability decision by referee was separate "matter" from underlying compensability claim within meaning of effective date provision of statutory amendment that eliminated requirement to pay benefits pending appeal and, thus, employer could refuse to pay widow benefits pending appeal, in light of fact that "matter" of refusal to pay benefits pending appeal arose after effective date of amendment, even though underlying claim for benefits arose before effective date of amendment. ORS 656.313.—Bird v. Bohemia, Inc., 846 P.2d 1210, 118 Or.App. 201.—Work Comp 1893.

Pa.Super. 1997. Husband's refusal to sign and abide by terms of property settlement agreement put on the record before the master was "dilatatory, obdurate, or vexatious conduct" and occurred during the "matter," within meaning of statute authorizing awards of attorney fees as sanctions, where husband's conduct occurred after wife's complaint for enforcement of agreement was filed and during the pendency of the divorce proceeding. 42 Pa. C.S.A. § 2503(7).—Bonds v. Bonds, 689 A.2d 275, 455 Pa.Super. 610.—Divorce 224.

Pa.Cmwlth. 1992. Term "matter" as used in Judicial Code provisions granting express statutory authority for award of counsel fees applies only to those matters pending or commencing in court of unified judicial system of Commonwealth. 42 Pa. C.S.A. § 2503(7, 9).—Com., Dept. of Transp., Bureau of Driver Licensing v. Smith, 602 A.2d 499, 145 Pa.Cmwlth. 164, appeal denied 613 A.2d 561, 531 Pa. 657.—Costs 194.10.

Pa.Cmwlth. 1982. Tenants whose business had been displaced by condemnation and who filed petition to enforce settlement agreement between tenants and redevelopment authority were not entitled to attorney fees as sanction for dilatatory, obdurate or vexatious conduct during pendency of matter or for conduct in commencing matter or otherwise was arbitrary, vexatious or in bad faith where it could not be said that, when authority delayed in paying tenants, it was either commencing or defending a "matter." 42 Pa.C.S.A. § 2503(7, 9).—White v. Redevelopment Authority, City of McKeesport, 451 A.2d 17, 69 Pa.Cmwlth. 307.—Costs 194.44.

Vt. 1996. "Matter" that lawyer is working on, for purpose of disciplinary rule prohibiting attorney from accepting private employment in matter in which attorney had substantial responsibility as pub-

lic employee, is general collection of facts, issues, blind alleys, options exercised and options that might be considered later, and arguments that are made and those that are held in reserve. Code of Prof.Resp., DR 9-101(B).—Petition of Vermont Elec. Power Producers, Inc., 683 A.2d 716, 165 Vt. 282.—Att'y & C 21.5(2).

Vt. 1951. The "contract originally declared upon" or the "matter", as such terms are used in rule relating to allowance of amendments means the substance of the claim, the substantial facts which lie at the basis of claim, the facts which give rise to the action. V.S. §§ 1611 et seq., 1618.—City Elec. Service & Equipment Co. v. Estey Organ Co., 77 A.2d 835, 116 Vt. 435.—Plead 248(4).

Vt. 1951. In action to recover for 668 capacitors in three sizes shipped by railway express seven days after defendant had placed with plaintiff written order for approximately 1144 capacitors in five sizes to be shipped immediately by truck express, amendment alleging modification of the original order by agreement of parties before shipment to conform to shipment as made involved the same "matter" and "subject of controversy," did not introduce a new cause of action and was properly allowed. V.S. § 1611 et seq., 1618.—City Elec. Service & Equipment Co. v. Estey Organ Co., 77 A.2d 835, 116 Vt. 435.—Plead 248(4).

Vt. 1924. Test of whether amendment sets up new cause of action is whether proposed amendment is different matter or same matter more fully or differently laid, "matter" referring to substantial facts forming basis of plaintiff's claim, and not those originally alleged.—Parker v. Bowen, 126 A. 522, 98 Vt. 115.—Plead 248(2).

Va. 1941. Evidence that defendant offered to pay a constable \$6 per week for future protection against arrest for selling whisky, which sales would constitute misdemeanors for which defendant could be prosecuted within one year upon a warrant obtained by constable, warranted conviction for "bribery", since a future offense by defendant in the county wherein constable performed his duties would become, during constable's term of office, a "matter" or "cause" which might by law come or be brought before constable in his official capacity within statute defining bribery. Code 1936, § 4496.—Ford v. Com., 15 S.E.2d 50, 177 Va. 889.—Brib 11.

Wash.App. Div. 1 2000. "Matter" in which review by growth management hearings board is requested, in which party must have participated in order to have standing to file petition for review by board under Growth Management Act (GMA), is not equivalent to an "issue," or to an "enactment," but instead, refers to a subject or topic of concern or controversy. West's RCWA 36.70A.280(2)(b).—Wells v. Western Washington Growth Management Hearings Bd., 997 P.2d 405, 100 Wash.App. 657, reconsideration denied.—Zoning 358.1.

MATTER, ACT, OR THING

Wis. 1942. Under statute providing that a public utility which does or causes to be done or permits

to be done any "matter, act, or thing" prohibited by statute, or omits to do any act, matter or thing required to be done, shall be liable to person injured in treble the amount of damages sustained in order to render a utility liable for treble damages the "matter, act, or thing" involved must have been done or omitted willfully or recklessly. St.1941, § 196.64 (W.S.A.)—*Chrome Plating Co. v. Wisconsin Elec. Power Co.*, 6 N.W.2d 692, 241 Wis. 554.—*Damag* 227.

MATTER ADDRESSED

C.A.10 (Colo.) 1995. Contribution sought by potentially responsible party (PRP) against second PRP for environmental remediation costs allegedly caused by second PRP was not "matter addressed" in consent decree between second PRP and Environmental Protection Agency (EPA) and, thus, contribution claim was not barred under CERCLA; fact-specific approach warranted conclusion that "matter addressed" in consent decree was settlement of second PRP's liability for government's past response costs and, if second PRP had intended to invoke contribution bar against first PRP, with full knowledge that first PRP had virtually completed all remediation of site in satisfaction of claims set forth in EPA's complaint, second PRP bore burden of eliminating any doubt that agreement extended that far. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 113(f)(2), as amended, 42 U.S.C.A. § 9613(f)(2).—*U.S. v. Colorado & Eastern R. Co.*, 50 F.3d 1530, on remand *Farmland Industries, Inc. v. Colorado & Eastern R. Co., Inc.*, 922 F.Supp. 437, on remand 944 F.Supp. 1492, 148 A.L.R. Fed. 723.—*Environ Law* 447.

C.A.7 (Ind.) 1994. Initial hazardous waste removal work that potentially responsible party was compelled to perform was not "matter addressed" by consent decree entered into by settling party, and thus, potentially responsible party was entitled, under CERCLA, to seek contribution from settling party for such work; removal work engaged in by potentially responsible party was short-term, limited effort to abate any immediate threat posed by wastes present at the site, while consent decree, provided for kind of long-term remedial work necessary to accomplish complete cleanup of the site. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 113(f), 42 U.S.C.A. § 9613(f).—*Akzo Coatings, Inc. v. Aigner Corp.*, 30 F.3d 761, rehearing and suggestion for rehearing denied, and rehearing and suggestion for rehearing denied, on remand 881 F.Supp. 1202, decision clarified on reconsideration 909 F.Supp. 1154.—*Environ Law* 447.

MATTER AFFECTING AERONAUTICS

N.J.Super.A.D. 1971. Granting of fixed base operator's license is "matter affecting aeronautics." N.J.S.A. 6:1-21(a, j), 22, 31, 44, 27:1A-3.—*Trenton Aviation, Inc. v. Gerard*, 273 A.2d 592, 113 N.J.Super. 253, certification denied 277 A.2d 388, 58 N.J. 331.—*Aviation* 213.1.

MATTER ASSERTED

Conn. 1992. In determining whether out-of-court statement is offered for truth of the "matter asserted," and thus, hearsay, matter asserted is matter asserted by statement, not matter asserted by proponent of the evidence.—*State v. Esposito*, 613 A.2d 242, 223 Conn. 299, appeal after new trial 1994 WL 411015, on subsequent appeal 670 A.2d 301, 235 Conn. 802.—*Crim Law* 419(1).

Tex.App.—Dallas 1994. "Hearsay" is statement, other than one made by declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted, and "matter asserted" includes any matter explicitly asserted and any matter implied by a statement, if probative value of statement as offered flows from declarant's belief as to the matter. Rules of *Crim.Evid.*, Rule 801(a, c, d).—*Bell v. State*, 877 S.W.2d 21, petition for discretionary review refused.—*Crim Law* 419(1).

MATTER COMPLAINED OF

D.Minn. 1957. The term "matter complained of" in statute providing that whenever any proceeding is instituted by United States under anti-trust laws the running of statute of limitations in respect of each and every private right of action based on any matter complained of in proceeding shall be suspended during pendency thereof pertains to matters which are in issue between government and named defendants. Clayton Act, § 1 et seq., 5, 15 U.S.C.A. §§ 12 et seq., 16.—*Charles Rubenstein, Inc. v. Columbia Pictures Corp.*, 154 F.Supp. 216.—*Monop* 28(4).

MATTER * * * CONCERNING A CLAIM

Or.App. 1999. Claimant's request, more than one year after he suffered his injury, for reclassification of the injury from nondisabling to disabling was not a "matter concerning a claim," within meaning of statute allowing any party to request a hearing on any matter concerning a claim except matters for which a procedure for resolving the dispute is provided in another statute; rather, the untimely reclassification request was required to be treated as a claim for aggravation. ORS 656.277(1, 2), 656.283(1).—*Shaw v. PACCAR Wagner Mining*, 983 P.2d 1050, 161 Or.App. 60.—*Work Comp* 2019.

Or.App. 1991. Whether to award attorney fees for services rendered in vocational assistance proceeding brought by workers' compensation claimant in proceeding before director of the Department of Insurance and Finance is not a "matter concerning a claim," for purposes of determining whether matter is within jurisdiction of Workers' Compensation Board; matters concerning a claim are those matters in which claimant's right to receive compensation, or the amount thereof, are directly in issue, and attorney fees are not "compensation." ORS 656.382(1).—*SAIF Corp. v. Severson*, 817 P.2d 1352, 109 Or.App. 136.—*Work Comp* 1086.

Or.App. 1991. Workers' Compensation Board had no authority to interpret agreement between paying agent under third-party recovery statutes and workers' compensation claimant, where agent's

lien did not attach to claimant's legal malpractice claim against attorney for negligently representing claimant in third-party action; interpretation of agreement was not "matter concerning a claim" within meaning of workers' compensation law. ORS 656.587, 656.704.—*Toole By and Through Professional Liability Fund v. EBI Companies*, 815 P.2d 216, 108 Or.App. 57, review allowed 822 P.2d 1196, 312 Or. 527, review allowed *Lloyd v. Port of Portland*, 822 P.2d 1196, 312 Or. 527, review allowed *Shepherd v. EBI Companies*, 822 P.2d 1196, 312 Or. 527, affirmed in part, reversed in part 838 P.2d 60, 314 Or. 102.—*Work Comp* 1090.

Or.App. 1990. Workers' Compensation Board and Hearings Division lacked jurisdiction over claim that State Accident Insurance Fund was required to pay penalty and attorney's fees because of allegedly unreasonable delay in reimbursing worker's health care provider; worker's right to compensation had not been affected and reimbursement dispute was therefore not "matter * * * concerning a claim" for jurisdictional purposes. ORS 656.704(3).—*Ashley v. University of Oregon*, 787 P.2d 506, 100 Or.App. 588, review denied 792 P.2d 104, 310 Or. 70.—*Work Comp* 1086.

MATTER CONCERNING ADMINISTRATION OF ESTATE

Bkrcty.S.D.Ohio 1988. Adversary proceeding brought by debtor to recover sums allegedly owing under burglar alarm installation and maintenance agreements was not "matter concerning administration of estate," or "other proceeding affecting liquidation of assets of estate or adjustment of debtor-creditor relationship," within meaning of jurisdictional statute. Bankr.Code, 28 U.S.C.A. § 157(b)(2)(A-O).—*In re United Sec. & Communications, Inc.*, 93 B.R. 945.—*Bankr* 2048.2.

MATTER CONCERNING THE ADMINISTRATION OF THE ESTATE

9th Cir.BAP (Cal.) 1989. Action to enjoin judgment creditors from attempting to enforce judgment against bankruptcy trustee personally was, by its nature, "matter concerning the administration of the estate," and therefore "core proceeding" for purposes of bankruptcy court jurisdiction. 28 U.S.C.A. § 157(b)(2)(A).—*In re Jacksen*, 105 B.R. 542.—*Bankr* 2048.3.

MATTER CONNECTED WITH DECEDENT'S ESTATE

Ind.App. 1937. Appeal from judgment in proceedings wherein decedent's administrator and others filed exceptions to final account of guardian of decedent was governed by statutes dealing with appeal from decision given in controversy growing out of "matter connected with decedent's estate," and requiring bond in double the sum in controversy, or, where no sum is involved, in a reasonable amount, and in absence of compliance with requirements of such statutes Appellate Court had no jurisdiction, since right to appeal is not vested right but one granted by statute.—*In re Singler*, 10 N.E.2d 409, 104 Ind.App. 415.

Ind.App. 1932. Appeal in proceedings involving claims against estates of certain sureties on depository bonds held in "matter connected with decedent's estate" within appeal statute (*Burns' Ann.St.* 1926, §§ 3310, 3311).—*Zeigler v. Board of Finance of Fountain County*, 179 N.E. 572, 97 Ind.App. 528.

MATTER CONNECTED WITH HIS AGENCY

Ga.App. 1918. Under Civ.Code 1910, §§ 3163, 3599, notice of dissolution given by former member of firm to traveling salesman was a "matter connected with his agency," and was actual notice to his principal.—*Franklin Buggy Co. v. Carter*, 94 S.E. 820, 21 Ga.App. 576.—*Princ & A* 178(4).

MATTER CONSTITUTING AN AVOIDANCE OR AFFIRMATIVE DEFENSE

Utah 2002. Automobile insurer's claim that the obligation to pay additional personal injury protection (PIP) benefits was fairly debatable was not a "matter constituting an avoidance or affirmative defense" and, therefore, did not need to be pleaded as an affirmative defense to bad faith claim; the insurer's claim controverted the allegation of denial of the claim without a reasonable basis for doing so, thus controverted the prima facie case, and did not extrinsically attack the claims. Rules Civ.Proc., Rule 8(c).—*Prince v. Bear River Mut. Ins. Co.*, 56 P.3d 524, 2002 UT 68, rehearing denied.—*Insurance* 3571.

MATTER CONSTITUTING AVOIDANCE OR AFFIRMATIVE DEFENSE

N.J.Super.A.D. 1956. Unclean hands is "matter constituting avoidance or affirmative defense" within rule requiring such matter to be set forth affirmatively. R.R. 4:8-3.—*Trautwein v. Bozzo*, 120 A.2d 788, 39 N.J.Super. 267.—*Plead* 78.

MATTER HARMFUL TO A MINOR

Mass.App.Ct. 2002. Pornographic computer images were "matter harmful to a minor," although statutory definition of "matter" did not include computer images; images were "visual representations," or "pictures," which were specifically included in statute. M.G.L.A. c. 272, § 28; c. 272, § 31 (2001).—*Com. v. Washburn*, 773 N.E.2d 444, 55 Mass.App.Ct. 493, review denied 774 N.E.2d 1099, 437 Mass. 1109.—*Obscen* 5.2.

MATTER IN ABATEMENT

Ind.App. 1928. Employer's answer of "No dispute" in compensation case held "matter in abatement," waived by pleading therewith matters in bar. *Burns' Ann.St.* 1926, § 9453 (repealed 1929).—*Martz v. Grasselli Chemical Co.*, 162 N.E. 737, 87 Ind.App. 400.—*Work Comp* 1327.

R.I. 1906. The defense that plaintiff, a foreign corporation, has not complied with Gen.Laws 1896, c. 253, § 37, by appointing, by written power of attorney, a competent person residing in the state as its attorney on whom to serve process, is strictly "matter in abatement," and, having been pleaded in

bar, cannot be considered.—*Russia Cement Co. v. Whitmarsh & Brown*, 67 A. 450.

Tex.Civ.App.—Fort Worth 1944. Alleged failure of employee suing city for personal injuries to give notice required by ordinance was “matter in bar” which was properly determined upon trial on the merits and not “matter in abatement”.—*City of Denton v. White*, 179 S.W.2d 834, writ refused w.o.m.—*Abate & R* 19; *Plead* 76.

Tex.Civ.App.—Fort Worth 1944. “Matter in bar” is that which attacks the maintenance at any time of any action upon the supposed cause of action, and “matter in abatement” is that which merely defeats the present proceedings.—*City of Denton v. White*, 179 S.W.2d 834, writ refused w.o.m.—*Abate & R* 18; *Plead* 76.

MATTER IN BAR

Tex.Civ.App.—Fort Worth 1944. Alleged failure of employee suing city for personal injuries to give notice required by ordinance was “matter in bar” which was properly determined upon trial on the merits and not “matter in abatement”.—*City of Denton v. White*, 179 S.W.2d 834, writ refused w.o.m.—*Abate & R* 19; *Plead* 76.

Tex.Civ.App.—Fort Worth 1944. “Matter in bar” is that which attacks the maintenance at any time of any action upon the supposed cause of action, and “matter in abatement” is that which merely defeats the present proceedings.—*City of Denton v. White*, 179 S.W.2d 834, writ refused w.o.m.—*Abate & R* 18; *Plead* 76.

MATTER INCIDENT TO AN ESTATE

Tex.Civ.App.—Texarkana 1978. By its enactment of statute providing that in contested probate matters, judge of county court shall on motion of any party to proceeding transfer such proceeding to district court, legislature pronounced that claims by or against estate are matters incident to estate and by doing so repealed judicial concept of term “probate matter,” and thus, for purposes of statute, a “matter incident to an estate” is a “probate matter” and a party to a “contested probate matter” is a “party to the proceedings.” V.A.T.S. Probate Code, § 5.—*Estate of Rosborough*, 567 S.W.2d 823, dismissed.—*Courts* 485.

MATTER IN CONTROVERSY

U.S.Neb. 1942. In determining whether federal court jurisdictional sum is involved in case where jurisdiction depends on diversity of citizenship, the value of the “matter in controversy” is measured not by the monetary result of determining the principle involved, but by its pecuniary consequence to those involved in the litigation. *Jud.Code* § 24(1), 28 U.S.C.A. § 1331 et seq.—*Thomson v. Gaskill*, 62 S.Ct. 673, 315 U.S. 442, 86 L.Ed. 951.—*Fed Cts* 336.1.

U.S.N.H. 1934. In suit against city police chief to enjoin enforcement against plaintiff of state hawkers’ and peddlers’ statute imposing license tax, “matter in controversy” embraced only right asserted to restrain defendant from compelling compli-

ance with statute in city by criminal prosecutions, and collateral statewide effect of decree, by virtue of stare decisis, upon other controversies with plaintiff turning on same question of law, could not be considered in ascertaining whether jurisdictional amount was involved. *Laws N.H.1931*, c. 102; *U.S.C.A. Const.Amend. 14*; 28 U.S.C.A. § 1331 et seq.—*Healy v. Ratta*, 54 S.Ct. 700, 292 U.S. 263, 78 L.Ed. 1248.—*Fed Cts* 343; *Inj* 110.

U.S.N.H. 1934. In suit to enjoin enforcement against plaintiff of state hawkers’ and peddlers’ statute imposing license tax, tax not penalty for nonpayment of tax or taxpayer’s right to do business in state, was “matter in controversy,” since payment of tax would avoid penalty provided by statute and end dispute. *Laws N.H.1931*, c. 102; *U.S.C.A. Const.Amend. 14*; 28 U.S.C.A. § 1331 et seq.—*Healy v. Ratta*, 54 S.Ct. 700, 292 U.S. 263, 78 L.Ed. 1248.—*Fed Cts* 343; *Inj* 110.

U.S.N.H. 1934. Only when suit is brought to restrain imposition of penalty already accrued by reason of failure to comply with statute or order assailed can penalty be included as any part of “matter in controversy,” in determining whether jurisdictional amount is involved. 28 U.S.C.A. § 1331 et seq.—*Healy v. Ratta*, 54 S.Ct. 700, 292 U.S. 263, 78 L.Ed. 1248.—*Fed Cts* 343; *Inj* 85(1).

U.S.N.H. 1934. Where statute challenged by suit commands suppression or restriction of business without reference to payment of any tax, right to do business or injury to it is “matter in controversy” (*Jud. Code* s 24(1), 28 USCA s 41(1)).—*Healy v. Ratta*, 54 S.Ct. 700, 292 U.S. 263, 78 L.Ed. 1248.—*Fed Cts* 343.

U.S.N.H. 1934. Taxpayer’s inability to litigate validity of tax without risk of irreparable injury to his business, while ground for invoking equity powers of federal court, affords no measure of value of “matter in controversy” (*Jud. Code* s 24(1), 28 USCA s 41(1)).—*Healy v. Ratta*, 54 S.Ct. 700, 292 U.S. 263, 78 L.Ed. 1248.—*Fed Cts* 343.

U.S.N.H. 1934. In suit to enjoin enforcement against plaintiff of state hawkers’ and peddlers’ statute imposing annual license tax, tax demanded, not capitalization thereof, was “matter in controversy.” *Laws N.H.1931*, c. 102; 28 U.S.C.A. § 1331 et seq.—*Healy v. Ratta*, 54 S.Ct. 700, 292 U.S. 263, 78 L.Ed. 1248.—*Fed Cts* 343; *Inj* 110.

U.S.N.H. 1934. In suits to enjoin collection of tax payable annually or imposition of penalties in case tax is not paid, sum due or demanded is “matter in controversy,” and amount of tax, not its capitalized value, is measure of jurisdictional amount. *Laws N.H.1931*, c. 102; 28 U.S.C.A. § 1331 et seq.—*Healy v. Ratta*, 54 S.Ct. 700, 292 U.S. 263, 78 L.Ed. 1248.—*Fed Cts* 343; *Inj* 110.

C.A.9 (Wash.) 1966. “Matter in controversy” within meaning of statutory requirement that matter in controversy exceed sum or value of ten thousand dollars in order to invoke federal District Court jurisdiction means the subject of litigation, the matter upon which the issue is brought and issue is joined. 28 U.S.C.A. § 1331.—*Quinault*

Tribe of Indians of Quinalt Reservation in State of Wash. v. Gallagher, 368 F.2d 648, certiorari denied 87 S.Ct. 1684, 387 U.S. 907, 18 L.Ed.2d 626.—Fed Cts 336.1.

C.C.A.8 (Iowa) 1942. In determining whether federal district court had "jurisdiction" of action to enjoin defendants from using plaintiffs' trade-name and for an accounting for profits derived from use of such name and for damages sustained as result of use of the name, the "matter in controversy" was the trade-name in question and the "amount in controversy" was not alone the damage which was claimed to have been done by the defendants but was the value of the property interest in that trade-name.—Beneficial Industrial Loan Corp. v. Kline, 132 F.2d 520.—Fed Cts 343.

M.D.Ala. 1998. Alabama law made the mental state of a 13-year-old child at the time of the accident in which she was injured a "matter in controversy," for purposes of defendant's motion for mental examination in mother's personal injury action on behalf of the child; under Alabama law, the presumption that a 13-year-old was incapable of contributory negligence could be rebutted by evidence that child possessed discretion, intelligence, and sensitivity to danger that an ordinary 14-year-old child possesses. Fed.Rules Civ.Proc.Rule 35, 28 U.S.C.A.—Pearson v. Norfolk-Southern Ry. Co., Inc., 178 F.R.D. 580.—Fed Civ Proc 1654.

N.D.Cal. 1943. A money demand is not an indispensable requisite to bringing of federal court action under statute requiring "matter in controversy" to exceed sum or value of \$3,000. 28 U.S.C.A. § 1331 et seq.—Arndt v. Bank of America, 48 F.Supp. 961.—Fed Cts 336.1.

N.D.Cal. 1943. In action to recover \$420 interest paid on void note for \$1,000, and to cancel trust deed which secured note and constituted cloud on title to the land, which was of a value exceeding \$3,000, the "matter in controversy" was the right to enjoyment of the land free of impairment of demand and lien claim of defendants, and the action involved federal court jurisdictional amount. 28 U.S.C.A. § 1331 et seq.—Arndt v. Bank of America, 48 F.Supp. 961.—Fed Cts 340.1.

S.D.Cal. 1953. A mere argument, or even a heated debate, between a shareholder and his corporation over advisability of bringing suit, is not a "controversy" within constitutional provision extending federal judicial power to controversies between citizens of different states, but even if it were, it is not the "matter in controversy" with respect to which the court is duty bound to align the parties to the action for the purpose of ascertaining whether requisite diversity of citizenship exists. 28 U.S.C.A. 1332; U.S.C.A.Const. art. 3, 2.—Smith v. Sperling, 117 F.Supp. 781, affirmed in part, reversed in part and remanded 237 F.2d 317, certiorari granted 77 S.Ct. 98, 352 U.S. 865, 1 L.Ed.2d 74, reversed 77 S.Ct. 1112, 354 U.S. 91, 1 L.Ed.2d 1205, 68 A.L.R.2d 805, dissenting opinion Swanson v. Traer, 77 S.Ct. 1119, 354 U.S. 91, 1 L.Ed.2d 1205.—Fed Cts 13, 305.

S.D.Ill. 1935. In suit to restrain enforcement of Secretary of Agriculture's regulations relating to hunting water fowl which were promulgated under Migratory Bird Treaty Act, regulations with restrictions which they imposed upon hunters to take and possess water fowl, and not damage which hunters would sustain in depreciation of property acquired for hunting of water fowl, was "matter in controversy," as respects jurisdiction of federal court. Migratory Bird Treaty Act, 16 U.S.C.A. §§ 703-711.—Brandenburg v. Doyle, 12 F.Supp. 342.—Courts 328(3).

S.D.Ind. 1934. Value of "matter in controversy" for purpose of determining federal court's jurisdiction is pecuniary result to either party which decree would produce either at present or in future (Jud. Code Sec. 24 (28 USCA Sec. 41)).—Armstrong v. Townsend, 8 F.Supp. 953.—Fed Cts 339.

E.D.Ky. 1942. In an action for declaration of rights or for recovery of benefits under an insurance policy, wherein no question is raised concerning validity of policy according to its terms, value of the "matter in controversy" for purpose of determining federal court jurisdiction is limited to the sum of such disputed obligations as may have accrued, and neither subsequent accruals nor the reserve which insurer may be required to maintain are matters in controversy. Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1).—Asbury v. New York Life Ins. Co., 45 F.Supp. 513.—Fed Cts 342.

E.D.Ky. 1942. In action to recover \$448.50 paid as life policy premium under protest and for an adjudication that policy should remain in force without further payment of premium under provisions of policy waiving payment of premiums during total permanent disability of insured, the "matter in controversy" was the actual amount of premium sued for, and therefore federal district court was without jurisdiction, where sole ground of jurisdiction relied on was diversity of citizenship. Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1).—Asbury v. New York Life Ins. Co., 45 F.Supp. 513.—Fed Cts 342.

E.D.Ky. 1942. To sustain federal court jurisdiction on ground of diversity of citizenship, the "matter in controversy" must be money or some right, the value of which in money can be calculated and ascertained. Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1).—Asbury v. New York Life Ins. Co., 45 F.Supp. 513.—Fed Cts 336.1.

E.D.Ky. 1939. As respects jurisdiction of federal court, value of "matter in controversy" in suit to quiet title or remove cloud therefrom is difference between value of land without cloud and value with the cloud on the land. Jud. Code Sec. 24, 28 U.S.C.A. 41.—Colony Coal & Coke Corp. v. Napier, 28 F.Supp. 76.—Fed Cts 340.1.

E.D.Ky. 1939. In suit under Kentucky statutes for injunction to prevent trespass on and to restrain assertion of claim against land, federal District Court was without jurisdiction in absence of showing that freedom from annoyance in use and enjoyment of lands and injury to vendable value thereof exceeded in value \$3,000, notwithstanding that land

was worth more than \$3,000, since such rights constituted the "matter in controversy" within statute. Ky. St. Sec. 2361; Jud. Code Sec. 24, 28 U.S.C.A. 41.—*Colony Coal & Coke Corp. v. Napier*, 28 F.Supp. 76.—Fed Cts 343.

E.D.La. 1969. Phrase "matter in controversy," as used in statute providing for federal jurisdiction of civil actions where requisite diversity of citizenship exists, includes all damages owed to plaintiff jointly by several defendants. 28 U.S.C.A. § 1332.—*Fulton v. White Cab Co.*, 305 F.Supp. 1333.—Fed Cts 336.1.

E.D.La. 1960. In an interpleader suit, the "matter in controversy," for diversity and jurisdictional requirements, is the fund to be distributed, and it is immaterial if some of the individual claims do not reach the \$10,000 figure. 28 U.S.C.A. § 1332(a).—*Pan Am. Fire & Cas. Co. v. Revere*, 188 F.Supp. 474.—Fed Cts 347.

E.D.La. 1942. Interest, even if looked upon as the measure of damages suffered by reason of nonpayment of money when due and, therefore, a penalty, is still 'interest' in its very nature, and it cannot be included in the "matter in controversy" in seeking to establish a federal District Court's jurisdiction. Jud. Code Sec. 24, 28 U.S.C.A. 41.—*Merrigan v. Metropolitan Life Ins. Co.*, 43 F.Supp. 209.—Fed Cts 338.

E.D.La. 1942. The words 'exclusive of interest and costs' in jurisdictional statute do not prevent the inclusion of attorney's fees as a constituent element of the "matter in controversy" for jurisdictional purposes, since such fees were not statutory 'costs' in the mind of the legislator when interest and costs were directed to be excluded from the computation of the value of the matter in controversy. Jud. Code Sec. 24, 28 U.S.C.A. 41; 28 U.S.C.A. 571, 572.—*Merrigan v. Metropolitan Life Ins. Co.*, 43 F.Supp. 209.—Fed Cts 338.

D.Md. 1950. The amount in dispute in tax case is the "matter in controversy" within the statutes giving the District Court original jurisdiction of certain civil actions in which the "matter in controversy" exceeds \$3,000. 28 U.S.C.A. §§ 1331, 1332.—*Reiling v. Lacy*, 93 F.Supp. 462, appeal dismissed 71 S.Ct. 614, 341 U.S. 901, 95 L.Ed. 1341.—Fed Cts 340.1.

D.Minn. 1940. Where the "matter in controversy," for purpose of federal court jurisdiction is the right to conduct and carry on a business, and the business has been prohibited by state statute, the issue is the value of the right to conduct the business free from the prohibition set up by the statute. Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1).—*Reese v. Holm*, 31 F.Supp. 435.—Fed Cts 342.

E.D.Mo. 1963. In actions in federal court challenging the constitutionality of state statutes under the federal constitution, the size of the "matter in controversy" for purposes of satisfying the \$10,000 jurisdictional amount requirement is the value of the right to be protected against unconstitutional interference measured by the loss which would result from enforcement. 28 U.S.C.A. §§ 1331,

2281, 2284.—*Cardinal Sporting Goods Co. v. Eagle-ton*, 213 F.Supp. 207, vacated 83 S.Ct. 1866, 374 U.S. 496, 10 L.Ed.2d 1043.—Fed Cts 343.

W.D.Mo. 1955. In determining whether or not the matter in controversy exceeds the jurisdictional limitaiton of federal District Court, the "matter in controversy" must be money, or some right, the value of which can be estimated and ascertained in money, and which appears by record to be of the requisite pecuniary value. 28 U.S.C.A. 1331, 1332.—*Collins v. Public Service Com'n of State of Mo.*, 129 F.Supp. 722.—Fed Cts 336.1.

W.D.Mo. 1940. In action by the owner of ten \$1,000 judgment bonds issued by city to restrain city from consummating a proposed judgment bond issue, amended complaint alleging that ordinance attempted to create priority of payment in favor of proposed issue and to impair the marketability of owner's bonds, and that owner would be subjected to irreparable loss and deprived of his property without due process, was subject to dismissal for failure to show that "matter in controversy" exceeded jurisdictional amount of \$3,000. Mo. St. Ann. Sec. 2895, p. 752; Mo. St. Ann. Const. art. 2, Sec. 15; art. 10, Secs. 11, 12; U.S.C.A. Const. art. 1, Sec. 10.—*Seeley v. Kansas City*, 31 F.Supp. 593.—Fed Cts 356.

W.D.Mo. 1935. Where ad damnum averments of petition showed damages within jurisdiction of federal District Court but prayer for judgment was for sum below jurisdictional amount, amount involved was within jurisdiction of federal District Court where action had been instituted in court of state in which ad damnum averments of petition constituted "matter in controversy" and controlled prayer for judgment. V.A.M.S. §§ 509.010, 509.040, 509.050; 28 U.S.C.A. §§ 1331, 1332, 1341, 1342, 1345, 1354, 1359.—*Lynch v. Yellow Cab Co. of Missouri*, 12 F.Supp. 926.—Rem of C 75.

D.Mont. 1932. In suits to quiet title and adjudicate water priorities, jurisdictional "matter in controversy" is not any separate, unidentified, undivided claim of one owner to segregate and use portion of waters, but is aggregate of uses.—*Dern v. Tanner*, 60 F.2d 626.—Fed Cts 347.

D.Neb. 1996. Fact that magistrate judge before whom civil rights action was pending and her former law firm had represented public employees when judge was in private practice and that firm was currently representing defendants in instant civil rights action did not establish that judge served as lawyer in matter in controversy or that lawyer with whom judge previously practiced served during such association as lawyer concerning matter such that disqualification was required; statutory phrase "matter in controversy" refers to pending case or one so nearly identical that two are same insofar as parties and claims are concerned, and instant case did not arise until long after judge left private practice. 28 U.S.C.A. § 455(b)(2).—*Renteria v. Schellpeper*, 936 F.Supp. 691.—Judges 47(1).

D.Nev. 1936. Generally value of right to be protected is considered the test in determining whether "matter in controversy" exceeds value of

\$3000 within jurisdiction of federal District Court. Jud.Code § 24(1), 28 U.S.C.A. § 41(1).—*Dewar v. Brooks*, 16 F.Supp. 636.—Fed Cts 336.1.

D.Nev. 1936. In action which challenges validity of annual license tax, tax demanded is the “matter in controversy,” and amount thereof is measure of jurisdictional amount. Jud.Code, § 24(1), 28 U.S.C.A. § 41 (1).—*Dewar v. Brooks*, 16 F.Supp. 636.—Fed Cts 343.

D.Nev. 1936. In suit against United States officer to enjoin collection of grazing fees on ground that Secretary of Interior had no right to demand license fee for temporary revocable permit, where aggregate sum of fees assessed was over \$13,000 and largest fee assessed against any plaintiff was \$2,625, “matter in controversy” was the license fee from which each plaintiff sought to be relieved, and hence federal District Court had no jurisdiction of suit. Taylor Grazing Act, 43 U.S.C.A. §§ 315-315n; Jud.Code, § 24(1), 28 U.S.C.A. § 41(1); U.S.C.A.Const. art. 3, § 1, cl. 1, and § 2, cl. 1.—*Dewar v. Brooks*, 16 F.Supp. 636.—Fed Cts 347.

D.N.J. 1959. Whether value of “matter in controversy” is sufficient to predicate federal jurisdiction on diversity of citizenship depends upon the property right sought to be protected. 28 U.S.C.A. § 1332.—*Garfield Local 13-566 Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Heyden Newport Chemical Corp.*, 172 F.Supp. 230.—Fed Cts 339.

E.D.N.Y. 1944. Under rule that “matter in controversy” must be measured by judgment demanded in complaint, the reserve set up by insurer by reason of an action on a policy may be made basis of federal jurisdiction as respects removal of causes in an action in equity, since it is policy itself which is in controversy as distinguished from action at law where it is amount sued for that is in controversy.—*Gates v. Union Central Life Ins. Co.*, 56 F.Supp. 149.—Rem of C 74.

S.D.N.Y. 1937. Where action was brought to recover sum of \$581.53, consisting of disability benefits allegedly due under life policies, amount of reserves which insurer was required to set up on each policy could not be included as part of “jurisdictional amount,” and federal court was without jurisdiction, since the “matter in controversy” was the amount for which judgment was demanded.—*Shabotzky v. Massachusetts Mut. Life Ins. Co.*, 21 F.Supp. 166.

M.D.N.C. 1933. In insurer’s suit to cancel life policy, face amount of policy is “matter in controversy” within statute governing federal jurisdiction (Jud.Code § 24 (1), 28 USCA § 41 (1)).—*New York Life Ins Co v. Jones*, 2 F.Supp. 600.—Fed Cts 342.

E.D.Pa. 1940. In suit to restrain collection of tax, the disputed tax is the “matter in controversy” as determinative of jurisdictional amount. Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1).—*Guerra v. City of Philadelphia*, 30 F.Supp. 791.—Fed Cts 336.1.

M.D.Pa. 1940. In action against surviving widow of deceased guardian to establish trust in favor of

infants in realty purchased by the guardian with infants’ money, the “matter in controversy” for purpose of establishing federal court jurisdiction was the realty purchased by guardian and not amount of infants’ money received by him. Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1).—*Catanzaritti v. Bianco*, 30 F.Supp. 873.—Fed Cts 340.1.

E.D.S.C. 1940. In determining whether the required jurisdictional amount in controversy is present, a court must follow the established principles that the right which the plaintiff seeks to protect is the “matter in controversy”, and that the right which it is sought to protect must be a “right of property”, and it must be such that it has a value which can be proved and calculated in the ordinary mode of a business transaction.—*Purcell v. Summers*, 34 F.Supp. 421, reversed 126 F.2d 390, certiorari denied 63 S.Ct. 32, 317 U.S. 640, 87 L.Ed. 516.—Fed Cts 336.1.

W.D.Tex. 1942. Where each of four plaintiffs in action for themselves and for others similarly situated sought to recover money judgment for excessive telephone rates and sought to enjoin collection of excessive rates, and amount claimed by each of the four was less than \$3,000, the “amount” or “matter in controversy” was less than \$3,000 and hence district court would remand the case to state court for lack of jurisdiction. 28 U.S.C.A. § 1331.—*Scarborough v. Mountain States Tel. & Tel. Co.*, 45 F.Supp. 176.—Rem of C 74.

Ill. 1906. The words “matter in controversy,” as used in Laws 1877, p. 153, authorizing the appellate court to recite in its final decree the facts as found by it, where the final determination of a cause “shall be made by the appellate court, as the result wholly or in part of the finding of the facts concerning the ‘matter in controversy,’ different from the finding of the court from which such cause was brought by appeal, or writ of error,” means the matters of fact in controversy.—*Gilmore v. City of Chicago*, 79 N.E. 596, 224 Ill. 490.

Iowa App. 1994. Judge in defendant’s prosecution for child sexual abuse did not have to recuse himself due to fact that member of his former law firm had represented defendant’s father in sexual abuse case several years earlier; prior criminal case against father was not “matter in controversy” under Code of Judicial Conduct. Code of Jud.Conduct, Canon 3, subd. D(1)(b), 40 I.C.A. Ch. 602 App.—*State v. Wells*, 522 N.W.2d 304.—Judges 46.

Ohio 2002. “Matter in controversy,” within meaning of statute under which one element for State’s liability for attorney fees was a finding that the position of the State in initiating the matter in controversy was not substantially justified, meant either the State’s conduct that gave rise to litigation even if the State did not initiate the litigation, or the State’s initiation of the litigation caused by the controversy. (Per Lundberg Stratton, J., with two Justices concurring and one Justice concurring in syllabus and judgment.) R.C. § 2335.39(B)(2).—*State ex rel. R.T.G., Inc. v. State*, 780 N.E.2d 998, 98 Ohio St.3d 1, 2002-Ohio-6716.—States 215.

Tex.Civ.App.—Beaumont 1942. The real “matter in controversy”, for purpose of determining whether state or federal court has jurisdiction of suit, is debt claimed in bill.—*American Emp. Ins. Co. v. Due*, 166 S.W.2d 160, writ refused w.o.m.—*Rem of C 75*.

Tex.Civ.App.—Beaumont 1938. In suit to foreclose or cancel a chattel mortgage lien, the “matter in controversy”, as respects jurisdiction, is not only the debt but the value of the security given for its payment.—*Bishop & Babcock Sales Co. v. Haley*, 115 S.W.2d 772.—*Courts 169(2)*.

Tex.Civ.App.—Beaumont 1938. The county court did not have jurisdiction of suit to cancel a note, chattel mortgage, and for damages, where value of mortgaged property was \$750 and damages prayed for were \$750, notwithstanding unpaid balance on note was only \$250, since the subject matter of the mortgage was a “matter in controversy” in determining jurisdiction.—*Bishop & Babcock Sales Co. v. Haley*, 115 S.W.2d 772.—*Courts 169(2)*.

Va. 1942. The real “matter in controversy”, within meaning of statute providing that any person who thinks himself aggrieved by any judgment in a controversy involving the construction of any statute, ordinance, or county proceeding imposing taxes may present a petition for a writ of error, is that for which the action is brought and the judgment is rendered, and not that which may or may not come into question, and, if that sum be less than the minimum jurisdiction of the court, the appeal or writ of error should be dismissed. Code 1936, § 6336.—*City of Richmond v. Eubank*, 18 S.E.2d 397, 179 Va. 70.—*Mun Corp 121*.

Va. 1926. “Matter in controversy” in reference to appellate jurisdiction defined.—*Bee Hive Mining Co. v. Ford*, 131 S.E. 203, 144 Va. 21.—*App & E 50(1)*.

MATTER IN DEMAND

Conn. 1953. Under statutes fixing the exclusive and concurrent jurisdictions of the Superior Court and the Court of Common Pleas, the phrase “relief * * * demanded” and phrase “matter in demand” are synonymous, and, therefore, in determining which court had jurisdiction of an action for damages, the dominant factor is amount of “matter in demand”. *Gen.St.1949*, §§ 7740, 7741, 7745.—*Holmquist v. Spinelli*, 94 A.2d 621, 139 Conn. 429.—*Courts 472.1*.

Conn. 1953. Under statutes fixing the exclusive and concurrent jurisdictions of the Superior Court and the Court of Common Pleas, the phrase “relief * * * demanded” and phrase “matter in demand” are synonymous, and, therefore, in determining which court had jurisdiction of an action for damages, the dominant factor is amount of “matter in demand”.—*Holmquist v. Spinelli*, 94 A.2d 621, 139 Conn. 429.

Conn. 1942. Ordinarily, “matter in demand” on amount of which common pleas court’s jurisdiction of action depends, must be determined on basis of allegations of complaint and demand for relief.

Gen.St.1930, § 5439.—*Congregation B’Nai Israel v. Dymytruk*, 28 A.2d 872, 129 Conn. 415.—*Courts 170*.

Conn. 1934. Ordinarily “matter in demand,” as respects court’s jurisdiction, is determined by amount of damages claimed in complaint; but where allegations thereof show plaintiff cannot recover damages claimed, “matter in demand” will be highest sum which plaintiff on face of complaint appears to be entitled to recover. *Gen.St.1930*, § 5439 (C.G.S.A. § 52-28).—*Atlantic Refining Co. v. Schoen*, 170 A. 478, 118 Conn. 26.—*Courts 122*.

Conn.Cir.A.D. 1968. Phrase “matter in demand” as used in statute relating to matter in demand in mortgage foreclosure, for jurisdictional purposes, means amount of original debt described in mortgage, regardless of amount due at time of foreclosure. C.G.S.A. § 52-38.—*Howell v. DiStasi*, 252 A.2d 308, 5 Conn.Cir.Ct. 346.—*Courts 121(2)*.

MATTER IN DISPUTE

U.S.Dist.Col. 1904. The phrase “matter in dispute,” as used in the Code of the District of Columbia, Act March 3, 1901, c. 854, § 233, 31 Stat. 1227, providing that any final judgment of the Court of Appeals may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, on writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of \$5,000, means money, or some right the value of which can be estimated and ascertained in money, and which appears by the record to be of the requisite pecuniary value; and, assuming that the term “matter in dispute” may embrace a right to have a claim against a foreign government presented through the political department of the United States, and that the value of such a right may be gauged by the possible pecuniary injury which may be sustained if no such action is taken, it is evident that a claim for damages from the German Empire in redress of an alleged wrongful imprisonment in that country is one having a merely conjectural value. Hence the value of the matter in dispute in a proceeding to compel by mandamus the Secretary of State to seek to obtain \$500,000 damages from the German Empire in redress of petitioner’s alleged wrongful imprisonment while on a visit to that country does not exceed the sum of \$5,000.—*U.S. ex rel. Holzendorf v. Hay*, 24 S.Ct. 681, 194 U.S. 373, 48 L.Ed. 1025.

C.C.A.1 (Puerto Rico) 1932. “Matter in dispute” on which appellate jurisdiction depends is matter in dispute between parties as case stands upon writ of error or appeal.—*Municipality of Rio Piedras v. Serra, Garabis & Co.*, 65 F.2d 691.—*App & E 50(1)*.

C.C.A.10 (Utah) 1940. By “matter in dispute” is meant the subject of litigation, the matter upon which the action is brought and issue is joined.—*Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604.

E.D.Ark. 1951. In determining whether jurisdictional amount is present, value or right to be protected in federal court is considered the test generally, and “matter in dispute” is considered as

being subject of litigation, the matter upon which action is brought and issue is joined and in relation to which, if issue be one of fact, testimony is taken.—*City of Memphis v. Ingram*, 98 F.Supp. 395, reversed 195 F.2d 338.—*Fed Cts* 336.1.

S.D.Cal. 1942. "Matter in dispute", within statute conferring jurisdiction on federal District Courts if matter in dispute is between citizens of different states and exceeds the sum or value of \$3,000, means the subject of the litigation, the matter upon which the action is brought, and issue is joined, and in relation to which, if issue be one of fact, testimony is taken. 28 U.S.C.A. §§ 1331, 1332, 1341 et seq., 1354, 1359.—*Associated Press v. Emmett*, 45 F.Supp. 907.—*Fed Cts* 336.1.

E.D.La. 1939. In action by labor union member in his representative capacity based on alleged conspiracy in restraint of trade by other unions, members thereof, and building construction contractors, where the "matter in dispute" was alleged to be the right of complainant to earn a living free from interference, pleas to jurisdiction filed by building contractors would be sustained in absence of evidence to show that any of individual complainants was concerned in the necessary amount. *Sherman Anti-Trust Act*, 15 U.S.C.A. 1-7, 15 note.—*Terrio v. S.N. Nielsen Const. Co.*, 30 F.Supp. 77.—*Fed Cts* 359.

Ga. 1936. "Matter in dispute," within statute authorizing removal of suits from state courts to federal courts, means subject of litigation or matter upon which action is brought and issue is joined, and in relation to which, if issue be one of fact, testimony is taken, and pecuniary value thereof may be determined not only by money judgment prayed, but in some cases by increased or diminished value of property directly affected by relief prayed, or by pecuniary result to one of parties immediately from judgment (*Jud.Code*, §§ 24, 28, 28 U.S.C.A. §§ 41, 71).—*National Linen Service Corp. v. Parks*, 185 S.E. 349, 182 Ga. 350.—*Rem of C* 73.

Ga.App. 1936. Phrase "matter in dispute" as used in statutes conferring jurisdiction means the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken.—*Clark v. Order of United Commercial Travelers of America*, 187 S.E. 852, 54 Ga.App. 324.

MATTER IN ISSUE

Mich. 1955. The first essential of the rule of res judicata is the identity of the matter in issue; the "matter in issue" is defined to be that matter upon which the plaintiff proceeds by his action, and which the defendant controverts by his pleadings.—*Clements v. Constantine*, 73 N.W.2d 889, 344 Mich. 446.—*Judgm* 715(1).

Mich. 1949. The first essential of the rule of res judicata is the identity of the "matter in issue", which is that matter upon which the plaintiff proceeds by his action and which the defendant controverts by his pleadings.—*Meister v. Dillon*, 37 N.W.2d 146, 324 Mich. 389.—*Judgm* 715(1).

Mich. 1943. A judgment is not "res judicata" in subsequent proceeding, unless identical "matter in issue," which is matter on which plaintiff proceeds and which defendant controverts by his pleadings, was determined by previous adjudication.—*McCormick v. Hartman*, 10 N.W.2d 910, 306 Mich. 346.—*Judgm* 585(1).

Mich. 1911. The first essential of the rule of res judicata is the identity of the "matter in issue," which is defined to be that matter on which plaintiff proceeds by his action, and which defendant controverts by his pleadings.—*Leroy v. Collins*, 130 N.W. 635, 165 Mich. 380.—*Judgm* 715(1).

Mont. 1925. Under Rev.Codes 1921, § 10645, deposition of party may be taken at any time after service of summons or appearance of defendant, and, under section 10674, he must answer questions pertinent to matter in issue; "matter in issue" being synonymous with subject-matter of the litigation as disclosed by complaint, and any evidence tending to prove any material allegation of complaint being deemed "pertinent."—*State v. District Court of Sixth Judicial Dist. in and for Park County*, 236 P. 553, 73 Mont. 297.—*Pretrial Proc* 172.

N.H. 1950. A "matter in issue" as related to estoppel by judgment is that matter upon which plaintiff proceeds by his action, and which defendant controverts by his pleadings, and means an essential element of a cause of action or a defense recognized by the law.—*Laconia Nat. Bank v. Lavallee*, 77 A.2d 107, 96 N.H. 353.—*Judgm* 719.

N.H. 1914. In an action for damages for personal injuries, where the declaration alleged that at the time of the accident plaintiff was defendant's servant, the "matter in issue," which means the essential element of the cause of action, was defendant's negligence and the relation between the parties, and not the particular relationship of master and servant.—*Chesley v. Dunklee*, 90 A. 965, 77 N.H. 263.

N.H. 1905. The matters which plaintiff must allege in his declaration and the defendant deny in his plea are necessary "matters in issue." In an action on a liquor dealer's bond, whether the dealer's failure to comply with the provisions of the statute in applying for a license was a "matter in issue" is to be determined by deciding whether the licensee's failure to comply with the provisions is a matter the state must allege and the licensee deny.—*State v. Corron*, 62 A. 1044, 73 N.H. 434, 6 Am. Ann. Cas. 486.

Tex.Civ.App. 1909. The "matter in issue" in a former action is that on which plaintiffs' cause of action is based, and which defendant denies by his pleadings.—*Kerr v. Blair*, 118 S.W. 791, 55 Tex.Civ. App. 349.—*Judgm* 717, 719.

MATTER IN LITIGATION

Cal.App. 4 Dist. 1939. In ejectment, the "matter in litigation" is the alleged right to the possession of the demanded premises on part of plaintiff, and her ouster by defendants, rather than title to

land.—*Barcroft v. Livacich*, 96 P.2d 951, 35 Cal. App.2d 710.—*Eject* 1.

Neb. 1959. Under statute permitting intervention by certain persons having interest in matter in litigation, phrase “matter in litigation” refers to the subject matter of the action, “the thing in controversy”. R.R.S.1943, § 25-328.—*Kirchner v. Gast*, 100 N.W.2d 65, 169 Neb. 404.—*Parties* 40(2).

Or. 1966. Funds which were represented by draft received in payment of indebtedness to plaintiff after pleadings were filed in suit wherein plaintiff and defendant sought an accounting and which were considered by the court only as a possible source from which the ultimate decree might be partially satisfied were not “matter in litigation” within intervention statute providing that at any time before trial any person who has interest in matter in litigation may by leave of court intervene. ORS 13.130.—*Taylor v. Pearl*, 415 P.2d 757, 244 Or. 81, appeal after remand 439 P.2d 7, 249 Or. 611.—*Parties* 40(2).

MATTER IN MITIGATION

N.Y. 1934. Generally, matter tending to disprove actual damages in libel action is admissible, though not pleaded, not being “matter in mitigation” within statute defining partial defense. Civil Practice Act, § 262.—*Fleckenstein v. Friedman*, 193 N.E. 537, 266 N.Y. 19.—*Libel* 111.

MATTER IN PAIS

Ala. 1953. “Matter in pais”, used to clarify an ambiguity in a contract, is that which is in opposition to that of record, that is, in opposition to those incidents which constitute the contract.—*Air Conditioning Engineers v. Small*, 65 So.2d 698, 259 Ala. 171.—*Contracts* 169.

MATTER IN PROBATE

Cal. 1940. In proceeding to determine heirship, an order denying plaintiffs’ motion for relief under statute concerning relief from judgments taken by mistake from plaintiffs’ default for failure to appear at trial was not an appealable order, since proceeding was a “matter in probate” and order was an “order in probate” and was not included within statute specifying orders and judgments in probate from which an appeal will lie. Code Civ.Proc. §§ 473, 963, subd. 3; Prob.Code, §§ 1190, 1240.—*In re O’Dea’s Estate*, 104 P.2d 368, 15 Cal.2d 637.—*Des & Dist* 71(7).

MATTER INVOLVED IN THE ACTION

S.D.N.Y. 1939. Plaintiff was not entitled to examine defendants and compel them to produce their books relating to defense of the suit by third parties, to enable plaintiff to determine whether activities of third parties were sufficient to enable plaintiff to invoke doctrine of estoppel as *res judicata* in any subsequent suit between plaintiff and third parties, such fact not being “matter involved in the action” since judgment could not bind third parties even if they defended suit. Fed.Rules Civ.

Proc., rule 34, 28 U.S.C.A.—*Lip Lure v. Bloomingdale Bros.*, 27 F.Supp. 811.—*Fed Civ Proc* 1581.

N.D.Ohio 1940. An action for declaratory judgment concerning validity of infringement of defendant’s patents, relationship and transactions between plaintiff and other companies involved in prior litigation involving the same patents, constituted “matter involved in the action” with respect to which defendant was entitled to production and inspection of documents, and motion for production and inspection was not a mere “fishing expedition.” Rules of Civil Procedure for District Courts, rule 34, 28 U.S.C.A.—*E.W. Bliss Co. v. Cold Metal Process Co.*, 1 F.R.D. 193.—*Pat* 292.3(2).

N.D.Ohio 1940. Communications between plaintiff and its own counsel concerning its private interests, rights and liabilities, are privileged, but letters and documents between counsel of one party and counsel of another party, or between plaintiff and other parties or their counsel, bearing upon participation in prior and pending litigation, are “matter involved in the action” within terms of rule of civil procedure governing inspection and production of documents, and are not privileged. Federal Rules of Civil Procedure, rule 34, 28 U.S.C.A.—*E.W. Bliss Co. v. Cold Metal Process Co.*, 1 F.R.D. 193.—*Witn* 198(1), 201(1).

MATTER INVOLVING FEDERAL TAX ADMINISTRATION

D.Minn. 1991. Conduct of IRS special agent and of former assistant United States Attorney in disclosing taxpayer’s return information violated a clearly established right and was not “objectively reasonable”, so that “good faith” defense was not available in suit against the United States for damages; it would not be “reasonable” to consider potential attorney for party in tax case to be a “party to the proceedings”, nor would it be reasonable to consider *pro hac vice* application for admission to the court as being a “matter involving federal tax administration” for purposes of disclosure under the statute. 26 U.S.C.A. §§ 6103, 6103(a), (h)(2, 4), 7431, 7431(b).—*McLarty v. U.S.*, 784 F.Supp. 1401.—*Int Rev* 4482.

MATTER INVOLVING PROBATE

Ky. 1998. District court had jurisdiction to give effect to the renunciation of will by guardian of incompetent adult; guardian’s decision to forego ward’s bequest under the will and take ward’s statutory portion of estate was a “matter involving probate,” and renunciation was not an “adversary proceeding” as no statute provided that renunciation of will by guardian must be commenced in circuit court. KRS 24A.120(2, 3).—*McElroy v. Taylor*, 977 S.W.2d 929.—*Courts* 192.

MATTER OCCURRING BEFORE THE GRAND JURY

D.N.J. 1998. Not every document that is presented in response to grand jury subpoena becomes a “matter occurring before the grand jury,” within meaning of Federal Rule of Criminal Procedure regarding the secrecy of grand jury proceedings;

Rule does not prevent disclosure of all documents subpoenaed by grand jury or of all documents reviewed by grand jury. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—U.S. v. Smith, 992 F.Supp. 743.—Gr Jury 41.30.

D.N.J. 1998. "Matter occurring before the grand jury," such as is protected by Federal Rule of Criminal Procedure regarding the secrecy of grand jury proceedings, includes the essence of what takes place in jury room, in order to preserve the freedom and integrity of deliberative process. Fed. Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—U.S. v. Smith, 992 F.Supp. 743.—Gr Jury 41.30.

R.I. 1998. Notice to target of grand jury investigation or other person that subpoena has been issued for his or her medical records, as required by Confidentiality of Health Care Communications and Information Act (CHCCIA), as well as opportunity to object to same, does not constitute disclosure of a "matter occurring before the grand jury" that serves to undermine grand jury secrecy, and thus, grand jury must comply with CHCCIA when seeking medical records via subpoena. Gen.Laws 1956, § 5-37.3-6.1; Superior Court Rules Crim. Proc., Rule 6(e).—In re Doe, 717 A.2d 1129.—Gr Jury 41.30.

MATTER OF ACCOUNT

Ala.Civ.App. 1997. Computation of child support arrearage under divorce decree is a "matter of account" within meaning of Rule of Civil Procedure authorizing reference, but reference should be reserved for cases that involve complicated computations or other characteristics deeming them appropriate for referral. Rules Civ.Proc., Rule 53(b).—Ex parte Mobayed, 689 So.2d 890.—Divorce 143(1).

MATTER OF ADMINISTRATION

N.Y. 1908. New York Charter (Laws 1897, p. 1, c. 378), creating a number of departments, among which was the department of highways, by section 458 (page 160) provides that the commissioner at the head of each department "may organize such bureaus as he shall from time to time deem necessary." Greater New York Charter (Laws 1901, p. 166, c. 466) § 388, vested in the city of New York all the powers and duties conferred on the commissioner of highways of the city of New York by the charter of 1897, and devolved upon the president of the borough as "matter of administration" certain powers and duties to be executed pursuant to the provisions of the act. Laws 1901, p. 636, c. 466, § 1543, provides that no head of a bureau, holding a position in the classified municipal civil service subject to competitive examination, shall be removed, unless he has been allowed an opportunity of making an explanation. *Held*, that the charter of 1901 conferred on the president of the borough of Manhattan the same powers possessed by the commissioner of highways under the charter of 1897; that the organization of bureaus is "matter of administration" within the meaning of the charter of 1901, and under such charter the president of the borough of Manhattan had power to organize a bureau of highways, and to appoint a head therefor;

and that one appointed as head of such bureau was not subject to removal, except under the restrictions of section 1543. Order, 109 N.Y.S. 1141, 124 App. Div. 939, reversed.—People ex rel. Collins v. Ah-earn, 86 N.E. 474, 193 N.Y. 441.—Mun Corp 203.

MATTER OF COUNTERCLAIM

N.Y.Sup.App.Term 1910. Under a plea of payment in an action for price of printing defendant cannot show what, under a lease, was due him from plaintiff for excess power furnished; this, under Code Civ.Proc. §§ 500, 501, being "matter of counterclaim," to be pleaded as such.—T.J. Hayes Printing Co. v. Springer, 123 N.Y.S. 240.—Plead 139.

MATTER OF COURSE

Neb. 1950. "Matter of course" is anything done or taken in course of routine or usual procedure, which is permissible and valid without being especially applied for and allowed.—State ex rel. Smith v. Nebraska Liquor Control Commission, 42 N.W.2d 297, 152 Neb. 676.

MATTER OF CURRENT EXIGENCY

C.A.D.C. 2001. Requests by father of man who dated British princess, together with father's political satire magazine, for information regarding death of his son and princess in automobile accident did not concern a "matter of current exigency" to the American public, as required to obtain expedited processing of requests under the Freedom of Information Act (FOIA); accident occurred two to three years before plaintiffs made their request for expedited processing. 5 U.S.C.A. § 552(a)(6)(E).—Al-Fayed v. C.I.A., 254 F.3d 300, 349 U.S.App.D.C. 223.—Records 62.

MATTER OF DEFENSE

Cal. 1899. We find many courts and law writers referring to an alibi as "matter of defense," and also stating that it must be "proved" by defendant. We doubt the strict legal propriety of using either one of these expressions in those jurisdictions where it is held that an alibi is sufficiently established when a reasonable doubt is raised in the minds of the jurors as to the presence of the defendant at the scene of the crime. Yet these terms are used, and held unobjectionable, in all those instructions where the jury are clearly and fully told that a reasonable doubt in their minds as to the presence of the defendant at the scene of the homicide entitles him to an acquittal. In all those cases the word "proved" is held to mean the production of sufficient evidence to raise a reasonable doubt.—People v. Winters, 57 P. 1067, 125 Cal. 325.

Mass. 1940. Under Negotiable Instruments Law providing that absence or failure of consideration is a matter of defense as against any person not a holder in due course and partial failure of consideration is a defense pro tanto whether the failure is an ascertained and liquidated amount or otherwise, "matter of defense" means matter which the defendant must not only plead but must also prove and one purpose of the section was to place the burden

of proof upon the defendant. G.L.(Ter.Ed.) c. 107, § 51 (M.G.L.A. c. 106 §§ 3–306(c), 3–408).—Leonard v. Woodward, 25 N.E.2d 705, 305 Mass. 332, 127 A.L.R. 999.—Bills & N 493(3).

Va. 1942. That death of coal mine employee was caused by his own negligence and would bar recovery in administratrix' death action at law against employer was a "matter of defense" on the merits and was not before the reviewing court on appeal involving question whether denial of compensation award by the industrial commission was *res judicata* of action.—Griffith v. Raven Red Ash Coal Co., 20 S.E.2d 530, 179 Va. 790.—Work Comp 2157.

MATTER OF FACT

W.D.La. 1943. After filing of declaration of taking in condemnation proceedings by United States, resulting in title passing to United States, sales by former title owners may be made as usual, but each sale is subject to exercise by title holder of right of release under Louisiana law relating to sale of litigious rights, if factors characterizing a litigious right be present, and such factors must be concurrent, and their existence is determinable as a "matter of fact" in each case by courts. LSA—C.C. arts. 2447, 2651–2654; 40 U.S.C.A. § 258a.—U.S. v. 12,918.28 Acres of Land in Webster Parish, La., 50 F.Supp. 712.—Champ 6(3); Em Dom 319.

N.C. 1943. What constitutes a boundary line is a "matter of law", but where the boundary line is, is a "matter of fact", and it is the province of the court to declare the one and that of the jury to ascertain the other. C.S. §§ 361–364.—McCanless v. Ballard, 24 S.E.2d 525, 222 N.C. 701.—Bound 52(2).

MATTER OF FORM

U.S.Miss. 1883. In a statute providing that if, in any action duly commenced within the time allowed, the writ shall not be abated, or the action be otherwise avoided or defeated, for any matter of form, the plaintiff may commence a new action within one year, "matter of form" means technical defects in the form of the action, pleadings, or proof, or variances between one and the other.—Meath v. Mississippi Levee Com'rs, 3 S.Ct. 284, 109 U.S. 268, 27 L.Ed. 930.

App.D.C. 1942. That indictment charging rape was signed by an Assistant United States Attorney rather than by the United States Attorney concerned a "matter of form" which did not prejudice defendant. Fed.Rules Crim.Proc. rules 6(d), 52(a), 18 U.S.C.A.—Robinson v. U.S., 128 F.2d 322, 76 U.S.App.D.C. 29.—Crim Law 1186.4(2).

C.C.A.7 (Ill.) 1941. A grand jury's authority to return an "indictment" was a "matter of substance" and not a "matter of form" within statute providing that no indictment shall be affected by reason of any defect or imperfection in matter of form only which does not tend to prejudice of defendant. Fed.Rules Crim.Proc. rules 6(d), 52(a), 18 U.S.C.A. § 556.—U.S. v. Johnson, 123 F.2d 111, certiorari granted 62 S.Ct. 625, 315 U.S. 790, 86 L.Ed. 1193,

certiorari granted U.S. v. Sommers, 62 S.Ct. 625, 315 U.S. 790, 86 L.Ed. 1194, reversed 63 S.Ct. 1233, 319 U.S. 503, 87 L.Ed. 1546, rehearing denied 64 S.Ct. 25, 320 U.S. 808, 88 L.Ed. 488, rehearing denied 64 S.Ct. 25, 320 U.S. 808, 88 L.Ed. 488.—Crim Law 1186.4(2).

Conn.Com.Pl. 1960. The intention of statute authorizing commencement of new action within one year, if action has been erased from docket for want of jurisdiction or otherwise averted or defeated by death of party or for any "matter of form," was to make the statute exceedingly broad and sweeping, and quoted phrase was used in contradistinction to "matter of substance," which embraces real merits of the controversy between the parties, and "matter of form" refers to the mode of procedure, so that any misconception as to the remedy may be included. C.G.S.A. § 52–592.—Dirton v. McCarthy, 166 A.2d 207, 22 Conn.Sup. 205, order set aside 177 A.2d 513, 149 Conn. 172, on remand 184 A.2d 69, 23 Conn.Sup. 384.—Lim of Act 130(1).

Ky. 1946. Where indictment accused defendant of forging indorsement of a check on a bank but did not charge that bank was an incorporated institution possessing authority to conduct a banking business, proposed amendment of indictment supplying such allegation was properly rejected as containing matter of substance and not "matter of form" only within statute regarding amendments. KRS 434.130, subd. 2; Cr.Code Prac. § 126, as amended by Acts 1942, c. 142.—Com. v. Browning, 192 S.W.2d 87, 301 Ky. 376.—Ind & Inf 159(1).

Md. 1940. Striking an incorrect appeal from an indictment from a group of otherwise correct appellations of the person accused which fully identify him is not an amendment of substance but is a mere "matter of form" within statute prohibiting the quashing of an indictment and the reversal of any judgment on an indictment for misdemeanor or felony by reason of any mere defect or imperfection in matters of form which shall not tend to the prejudice of the defendant. Code 1939, art. 27, §§ 646, 649.—Romans v. State, 16 A.2d 642, 178 Md. 588, certiorari denied 61 S.Ct. 732, 312 U.S. 695, 85 L.Ed. 1131.—Crim Law 1186.4(2).

Mass. 1971. Where Massachusetts residents, who were injured in automobile accident in Massachusetts involving New York resident, initiated action in Massachusetts against New York resident by service on Massachusetts' Registrar of Motor Vehicles, but failed to send their registered mail notice to New York resident as required by Massachusetts' statute, failure was a "matter of substance" and not "matter of form" within meaning of Massachusetts statute providing that if action is commenced within time, and writ fails of sufficient service or return because of "matter of form," new action may be commenced for same cause within one year. M.G.L.A. c. 90 §§ 3A–3C; c. 260 §§ 4, 32.—Gifford v. Spehr, 266 N.E.2d 657, 358 Mass. 658.—Lim of Act 130(9).

Mass.App.Ct. 2002. A dismissal for want of jurisdiction is for a "matter of form" within the mean-

ing of statute providing that if timely commenced action is dismissed for any matter of form, plaintiff may commence new action for same cause within one year after dismissal of original action. M.G.L.A. c. 260, § 32.—*Boutiette v. Dickinson*, 768 N.E.2d 562, 54 Mass.App.Ct. 817, review denied 774 N.E.2d 1098, 437 Mass. 1107.—*Lim of Act 130(7)*.

Mass.App.Ct. 1995. Dismissal for bringing action in wrong court is “matter of form” within meaning of statute providing that if timely commenced action is dismissed for any matter of form, plaintiff may commence new action for same cause within one year after dismissal. M.G.L.A. c. 260, § 32.—*Ciampa v. Beverly Airport Com’n*, 650 N.E.2d 816, 38 Mass.App.Ct. 974, review denied 652 N.E.2d 145, 420 Mass. 1105.—*Lim of Act 130(5)*.

Mich. 1933. Officer’s return showing service on corporation having name slightly different from defendant held not subject to amendment after entry of default judgment, as involving “matter of form” (Comp.Laws 1929, §§ 14147, 14148, 14451).—*Dades v. Central Mut. Auto Ins. Co.*, 248 N.W. 616, 263 Mich. 260.—*Proc 164(3)*.

Miss. 1948. Where action for breach of oral contract of employment was commenced in federal district court within three years after plaintiff’s discharge and was dismissed for want of jurisdiction, such dismissal was for “matter of form” so that action for same cause commenced in state court within one month after dismissal was within saving provision of statute permitting commencement of new action for same cause within one year after abatement or other determination of action for any “matter of form” and hence action in state court was not barred by limitations. Code 1942, § 744.—*Frederick Smith Enterprise Co. v. Lucas*, 36 So.2d 812, 204 Miss. 43.—*Lim of Act 130(5)*.

Miss.App. 2000. For purposes of savings statute, which allows a properly filed action that has been abated or avoided for any matter of form to be refiled in proper court within one year after abatement or reversal of original action, “matter of form” may include orders of dismissal for lack of jurisdiction. West’s A.M.C. § 15–1–69.—*Wertz v. Ingalls Shipbuilding Inc.*, 790 So.2d 841, rehearing denied, and certiorari denied.—*Lim of Act 130(7)*.

Vt. 1915. P.S. 1566, providing that if an action commenced within the time limited in the chapter is abated, or otherwise defeated by death of a party, or for matters of form, the plaintiff may commence a new action for the same cause of action within one year, does not apply to a cause which was before determined on the merits; and plaintiff’s entry of a claim, in a suit against a trustee which was heard on its merits with judgment against him for want of evidence to support the statement of his claim, was a bar to his subsequent action; a failure in the form of proof, such as a variance between allegation and proof, or a failure to support the action by evidence because of an averment making some fact material which was not necessary to a valid cause of action is not a variance as to a

“matter of form” but a failure to prove matter of substance.—*Kent v. Batchelder*, 93 A. 264, 88 Vt. 563.

MATTER OF GENERAL OR PUBLIC INTEREST

C.A.5 (Ga.) 1973. Credit report, which was distributed pursuant to written contract providing that report was to be maintained in strict confidence, was distributed to only 11 subscribers for commercial purposes and which referred to person only in regard to his business and his relationship with business associates in commercial capacity, was not a “matter of general or public interest” so as to be afforded a conditional privilege under First Amendment. U.S.C.A.Const. Amend. 1.—*Hood v. Dun & Bradstreet, Inc.*, 486 F.2d 25, certiorari denied 94 S.Ct. 1580, 415 U.S. 985, 39 L.Ed.2d 882.—*Const Law 90.1(5)*.

MATTER OF GREAT PUBLIC IMPORTANCE

Colo. 1966. A case in which a court is proceeding without jurisdiction of the persons or the subject matter involves a “matter of great public importance” within the meaning of the rule that relief in the nature of prohibition will not be granted except in matters of great public importance. Rules of Civil Procedure, rules 111(a), 116.—*Smar-do v. Huisenga*, 412 P.2d 431, 159 Colo. 442.—*Prohib 1*.

MATTER OF LAW

C.C.A.3 (Pa.) 1941. In action for value of attorney’s services, trial court’s findings concerning difficulty of the legal problem with respect to which the services were rendered rested not upon fact but upon “matter of law”, and hence reviewing court would determine whether the question was as difficult as the trial court concluded it was. Federal Rules of Civil Procedure, rule 52(a), 28 U.S.C.A.following section 723c.—*Kuhn v. Princess Lida of Thurn & Taxis*, 119 F.2d 704.—*Fed Cts 755*.

Ill. 1942. To become a “matter of law” justifying a judgment for defendants notwithstanding the verdict, there must be no evidence tending to establish plaintiff’s case.—*Gnat v. Richardson*, 39 N.E.2d 337, 378 Ill. 626.—*Judgm 199(3.10)*.

Mass. 1942. Where judge of superior court dismissed petition for writ of mandamus and another judge of same court dismissed appeal from first order of dismissal, appeal from order dismissing the first appeal disclosed “matter of law” which was clearly “apparent on the record” within meaning of statute relating to appeals and second appeal was properly before Supreme Judicial Court. G.L.(Ter. Ed.) c. 231, § 96.—*Murphy v. Board of Public Welfare of City of Brockton*, 45 N.E.2d 468, 312 Mass. 698.—*App & E 93*.

Mass. 1937. Where facts upon which court based its implied finding, that defense set up by amended “plea in bar” was established, were not incorporated in record, no “matter of law” on which order sustaining plea was founded was apparent on record, and therefore such order although

decisive of case was not reviewable. G.L.(Ter.Ed.) c. 231, § 96.—*Styrnbrough v. Cambridge Sav. Bank*, 11 N.E.2d 807, 299 Mass. 22.—App & E 93.

Mass. 1937. Where facts relating to plaintiff's contention that he had a right to jury trial were not incorporated in record, there was no "matter of law" respecting such contention "apparent on record" on which plaintiff could base right to appeal. G.L.(Ter.Ed.) c. 231, § 96.—*Styrnbrough v. Cambridge Sav. Bank*, 11 N.E.2d 807, 299 Mass. 22.—App & E 93.

N.C. 1943. What constitutes a boundary line is a "matter of law", but where the boundary line is, is a "matter of fact", and it is the province of the court to declare the one and that of the jury to ascertain the other. C.S. §§ 361-364.—*McCanless v. Ballard*, 24 S.E.2d 525, 222 N.C. 701.—Bound 52(2).

N.C. 1927. Order reducing damages in action for alienation of affections and seduction held to involve "matter of law" reviewable by Supreme Court. Const. art. 4, § 8; C.S. § 591.—*Hyatt v. McCoy*, 140 S.E. 807, 194 N.C. 760.—App & E 979(5).

S.C. 1943. When language alleged to be libelous or slanderous is plain and admits of but one reasonable construction, it becomes a "matter of law" for the determination of court.—*Stokes v. Great Atlantic & Pacific Tea Co.*, 23 S.E.2d 823, 202 S.C. 24.—Libel 123(2).

Tex.Com.App. 1939. A representation as to amount of compensation to which employee was entitled under Workmen's Compensation Act by which employee was induced to enter into compromise agreement was representation as to "matter of law" as respects right of employee to avoid agreement for fraud. *Vernon's Ann.Civ.St. art. 8306 et seq.*—*Safety Casualty Co. v. McGee*, 127 S.W.2d 176, 133 Tex. 233, 121 A.L.R. 1263.—Work Comp 1148.

Tex.App.—San Antonio 1984. In reviewing "matter of law" points, Court of Appeals will examine all evidence in support of findings forming basis of judgment and if converse of finding is conclusively established, point will be sustained.—*Butler v. Wright Way Spraying Service*, 683 S.W.2d 823, reversed 690 S.W.2d 897, appeal after remand 743 S.W.2d 304, writ denied.—App & E 842(1).

Tex.Civ.App.—Dallas 1942. Where insurance company refused to render for taxation reserves for unearned premiums but in making its rendition had treated the reserve as an indebtedness, the district assessor had no discretion except to list the unearned premium reserve in his process of assessing unrendered property, their taxable character being for determination of trial court as a "matter of law". *Vernon's Ann.Civ.St. arts. 7145, 7147.*—*Highland Park Independent School Dist. v. Republic Ins. Co.*, 162 S.W.2d 1056, reversed 171 S.W.2d 342, 141 Tex. 224.—Schools 103(1), 106.12(11).

Tex.Civ.App.—Dallas 1942. In suit by independent school district to recover back taxes from insurance company following assessment proceed-

ings on alleged unrendered personal property, question whether items of municipal bonds and accrued interest uncollected were taxable was for determination of trial court as a "matter of law". *Vernon's Ann.Civ.St. arts. 7145, 7147.*—*Highland Park Independent School Dist. v. Republic Ins. Co.*, 162 S.W.2d 1056, reversed 171 S.W.2d 342, 141 Tex. 224.—Schools 106.12(11).

MATTER OF LAW APPARENT ON THE RECORD

Mass. 1970. Aside from whether "long-arm" statute authorized substitution of a foreign executrix upon death of original defendant in contract action, where answer in abatement filed by executrix set forth new facts which were not apparent on record as it stood prior to pleading, i.e., that no ancillary administration had been taken out in Commonwealth, appeal from order sustaining answer in abatement was not founded upon a "matter of law apparent on the record" as required by statute and was not appealable. M.G.L.A. c. 231 § 96.—*Allon Textile, Inc. v. Bates*, 265 N.E.2d 598, 358 Mass. 526.—App & E 4.

Mass. 1943. An "agreed statement of facts", though, in part, only an agreement as to evidence to be considered by trial judge sitting without a jury, was a part of the "record" on appeal, but the only "matter of law apparent on the record" that could be considered on such appeal was whether the order was warranted by the evidence. G.L.(Ter.Ed.) c. 231, § 96.—*Pequod Realty Corp. v. Jeffries*, 51 N.E.2d 308, 314 Mass. 713.—App & E 519.

MATTER OF LOCAL CONTROVERSY

Ga. 1977. Adjoining land owner was not required to exhaust administrative remedies before bringing action against school district on allegations that, because of alteration of drainage and diversion of natural flow of waters from school district property, its land had been and was being damaged; such controversy was not "matter of local controversy" in reference to the construction or administration of the school law, such as to require prior resort to administrative tribunal. Code, § 32-910.—*Eastwind Developers, Ltd. v. Board of Education for the City of Valdosta*, 234 S.E.2d 504, 238 Ga. 587.—Schools 115.

MATTER OF PROBATE

Cal. 1911. Code Civ.Proc. § 1639 (repealed 1931. See Prob.Code, § 932), providing that on the death of an executor his accounts may be presented to and settled by the court in which the estate of which he was executor is being administered, and that upon petition of his successor such court may compel the personal representatives of the deceased executor to render an account of the administrator of their testator, and to settle such account as in other cases, is a "matter of probate," jurisdiction of which may, under Const. art. 6, § 5, be conferred upon the superior court, sitting in probate.—*King v. Chase*, 115 P. 207, 159 Cal. 420.—Ex & Ad 469(1).

Colo. 1937. Where status of heirship or non-heirship, whether dependent on matters of legal or equitable cognizance, becomes material in probate of will or in any proceedings incident thereto, it is "matter of probate" within constitutional provision giving county court original jurisdiction in all "matters of probate". Const. art. 6, § 23.—*In re Stoiber's Estate*, 72 P.2d 276, 101 Colo. 192, 112 A.L.R. 1416.—*Wills* 248.

MATTER OF PROCEDURE

Cal. 1926. Defect in verdict of guilty for first degree murder in failing to fix penalty, after which court fixed penalty at death, held not an error, in "matter of procedure" under Const. art. 6, § 4½, but in effect a denial of trial by jury.—*People v. Hall*, 249 P. 859, 199 Cal. 451.—*Crim Law* 1186.4(11).

MATTER OF PUBLIC CONCERN

C.A.11 (Fla.) 1998. Letter from employee of county housing authority to her supervisor, which contained accusations that supervisor forced her to engage in discriminatory housing practices, clearly did not contain speech on a "matter of public concern," and therefore, supervisor was entitled to qualified immunity from employee's § 1983 claim alleging that she was terminated in retaliation for such letter in violation of the First Amendment; letter focused on employee's own aggravation and her disputes with supervisor rather than rights of potential tenants. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.—*Gonzalez v. Lee County Housing Authority*, 161 F.3d 1290.—*Civil R* 214(4).

C.A.11 (Ga.) 2001. For purposes of determining whether government's alleged retaliation against employee for his speech violated the First Amendment, employee's speech addresses a "matter of public concern" if it relates to any matter of political, social, or other concern to the community. U.S.C.A. Const.Amend. 1.—*Chesser v. Sparks*, 248 F.3d 1117.—*Const Law* 90.1(7.2).

C.A.7 (Ill.) 1987. Discharged probation officer's letter detailing serious abuses in publicly funded probation office was speech involving "matter of public concern" for purpose of determining whether discharge violated First Amendment, where letter revealed drinking of alcohol by probation office employees during business hours, falsifying of mileage charges to cover meal expenses, inappropriate taking of sick and vacation days, misappropriating of public funds for unauthorized uses, and sleeping on job. U.S.C.A. Const.Amend. 1.—*Ohse v. Hughes*, 816 F.2d 1144, certiorari denied 108 S.Ct. 748, 484 U.S. 1025, 98 L.Ed.2d 761, certiorari granted, vacated 108 S.Ct. 1070, 485 U.S. 902, 99 L.Ed.2d 230, on remand 848 F.2d 196, order vacated on rehearing 863 F.2d 22.—*Const Law* 90.1(7.2).

C.A.7 (Ind.) 1994. Executive secretary of county plan commission spoke out on "matter of public concern," for purposes of determining whether her speech was protected, when she charged that county building inspector made claims for excessive mileage reimbursements, failed to make required inspections, and engaged in partisan politics on

county time, and that commissioners violated open door law; alleged activities of inspector were the type that result in misuse of public funds and trust, and violations of open door law was matter entirely in public interest. U.S.C.A. Const.Amend. 1.—*Marshall v. Porter County Plan Com'n*, 32 F.3d 1215, rehearing and suggestion for rehearing denied, certiorari denied 115 S.Ct. 1111, 513 U.S. 1155, 130 L.Ed.2d 1076.—*Const Law* 90.1(7.2); *Zoning* 352.

C.A.5 (Miss.) 1994. High school teacher's statements criticizing school district's cancellation of art program at predominantly black junior high school addressed "matter of public concern" and were thus protected by First Amendment, notwithstanding teacher's alleged personal interest in making statements because retention of program would result in better prepared art students for teacher; statements were made against backdrop of public debate, most statements were made in public forum, and one statement was made on behalf of others. U.S.C.A. Const.Amend. 1, 14.—*Tompkins v. Vickers*, 26 F.3d 603, rehearing en banc denied 37 F.3d 634.—*Const Law* 90.1(7.3); *Schools* 147.12.

C.A.8 (Mo.) 1995. Public employee's speech touches upon "matter of public concern" when it is matter of political, social, or other concern to community at large, but speech does not touch upon "matter of public concern" when employee speaks upon matters only of personal interest. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.—*Kincade v. City of Blue Springs, Mo.*, 64 F.3d 389, rehearing and suggestion for rehearing denied, certiorari denied 116 S.Ct. 1565, 517 U.S. 1166, 134 L.Ed.2d 665.—*Const Law* 90.1(7.2).

C.A.8 (Neb.) 2003. Public employee's speech is protected by the First Amendment if it is on a matter of public concern; in order for speech to be on a "matter of public concern," the speech must be fairly considered as relating to any matter of political, social, or other concern to the community. U.S.C.A. Const.Amend. 1.—*Meyers v. Nebraska Health and Human Services*, 324 F.3d 655.—*Const Law* 90.1(7.2).

C.A.8 (Neb.) 2000. In order to be speech on a "matter of public concern," so as to be entitled to First Amendment protection, public employee's expression must be fairly considered as relating to any matter of political, social, or other concern to the community. U.S.C.A. Const.Amend. 1.—*Domina v. Van Pelt*, 235 F.3d 1091.—*Const Law* 90.1(7.2).

C.A.8 (Neb.) 2000. County employee's report that he had witnessed former county road superintendent and department secretary engaged in what appeared to be a sexual act during noon lunch hour dealt with a "matter of public concern," for purposes of determining whether employee's speech was protected by the First Amendment; during year prior to employee's report, community was "buzzing" with rumors that superintendent and secretary were having an affair, and concern had been expressed that they were misusing county time and tax dollars on non-work activities. U.S.C.A. Const.

Amend. 1.—*Domina v. Van Pelt*, 235 F.3d 1091.—*Const Law* 90.1(7.2); *Counties* 67.

C.A.10 (N.M.) 2001. “Matter of public concern,” speech regarding which by a public employee is protected by First Amendment, are those which can be fairly considered as relating to any matter of political, social, or other concern to the community. *U.S.C.A. Const.Amend. 1.*—*Finn v. New Mexico*, 249 F.3d 1241.—*Const Law* 90.1(7.2).

C.A.4 (N.C.) 1995. Public employee’s expression of grievances concerning his own employment is not “matter of public concern”, for purposes of First Amendment whistle-blower claim under § 1983. *U.S.C.A. Const.Amend. 1;* 42 *U.S.C.A. § 1983.*—*Gray v. Laws*, 51 F.3d 426, appeal after remand 87 F.3d 1308.—*Const Law* 90.1(7.2).

C.A.6 (Ohio) 1999. In general, a “matter of public concern,” for purposes of determining whether public employee’s speech is protected by First Amendment, is a matter of political, social, or other concern to the community. *U.S.C.A. Const. Amend. 1.*—*Jackson v. Leighton*, 168 F.3d 903, 1999 *Fed.App.* 65P.—*Const Law* 90.1(7.2).

C.A.10 (Okla.) 1998. Media publicity concerning dispute is not determinative of whether public employee’s speech related to “matter of public concern” for purpose of First Amendment analysis. *U.S.C.A. Const.Amend. 1.*—*Lancaster v. Independent School Dist. No. 5*, 149 F.3d 1228.—*Const Law* 90.1(7.2).

C.A.10 (Okla.) 1998. For First Amendment purposes, public employee’s speech on “matter of public concern” is speech which can be fairly considered as relating to any matter of political, social, or other concern to community. *U.S.C.A. Const. Amend. 1.*—*Curtis v. Oklahoma City Public Schools Bd. of Educ.*, 147 F.3d 1200.—*Const Law* 90.1(7.2).

C.A.10 (Okla.) 1998. School district administrator’s advocacy of particular method for determining whether racial equity existed in district, and his activities in connection with submission of equity report, which advocacy and activities he alleged formed basis for his discharge, involved “matter of public concern” for First Amendment purposes; speech did not address matters of mere personal interest, context of speech was school board’s decision to end desegregation measures and ongoing litigation to determine whether desegregation consent decree could be lifted, and speech informed public debate and assisted public’s evaluation of performance of public institutions. *U.S.C.A. Const.Amend. 1.*—*Curtis v. Oklahoma City Public Schools Bd. of Educ.*, 147 F.3d 1200.—*Const Law* 90.1(7.3); *Schools* 63(1).

C.A.10 (Okla.) 1989. In evaluating First Amendment rights of public employees, an issue is a “matter of public concern” if it is a matter of political, social, or other concern to the community. *U.S.C.A. Const.Amend. 1.*—*Starrett v. Wadley*, 876 F.2d 808.—*Const Law* 90.1(7.2).

C.A.3 (Pa.) 1995. Public employee’s speech addresses “matter of public concern”, for purposes of determining whether it is protected under First

Amendment, when it can be fairly considered as relating to any matter of political, social, or other concern to community. *U.S.C.A. Const.Amend. 1.*—*Watters v. City of Philadelphia*, 55 F.3d 886.—*Const Law* 90.1(7.2).

C.A.5 (Tex.) 1989. High school teacher’s use of supplemental reading list for world history class did not present “matter of public concern,” for First Amendment purposes, and teacher’s conduct of disregarding school district’s administrative process for approval of supplemental reading list was not “protected speech”; therefore, inquiry into reasons for nonrenewal of teacher’s employment contract was unnecessary, in § 1983 action, wherein teacher claimed that nonrenewal was attempt to censor contents of reading list. *U.S.C.A. Const.Amend. 1.*—*Kirkland v. Northside Independent School Dist.*, 890 F.2d 794, certiorari denied 110 S.Ct. 2620, 496 U.S. 926, 110 L.Ed.2d 641.—*Const Law* 90.1(7.3); *Schools* 147.12.

C.A.5 (Tex.) 1986. Statement by probationary employee of state mental health facility made to employee of county outpatient center, indicating that state facility had changed its policy on length of patient stay, was not a “matter of public concern” so as to preclude probationary employee’s discharge under the First Amendment, where issue of length of patient stay was not matter of public debate in community but was a concern to the two employees due to additional burden it would place on county center, probationary employee was not seeking to alert public to any wrongdoing or breach of public trust, and proposed policy change was within sole discretion and responsibility of director of state facility acting under policy directives from Texas Department of Mental Health and Mental Retardation. *U.S.C.A. Const.Amend. 1.*—*Gomez v. Texas Dept. of Mental Health and Mental Retardation*, 794 F.2d 1018.—*Const Law* 90.1(7.2).

C.A.7 (Wis.) 2002. Regarding the first prong of test used to analyze freedom-of-speech claims by government employees, which is that the speech must address matter of public concern or else it is not protected by First Amendment, speech is a “matter of public concern” if it addresses a matter of political, social, or other community concern, and in determining whether statements relate to a matter of public concern, court examines their content, form, and context. *U.S.C.A. Const.Amend. 1.*—*Pichelmann v. Madsen*, 31 *Fed.Appx.* 322.—*Const Law* 90.1(7.2).

M.D.Ala. 1997. Comments made by public employee in opposition to appointment of persons to positions within department which do not attempt to bring to light fraud or wrongdoing but are personal grievances do not concern “matter of public concern” and are not entitled to constitutional protection. *U.S.C.A. Const.Amend. 1.*—*Boyet v. Troy State University at Montgomery*, 971 F.Supp. 1403, affirmed 142 F.3d 1284, rehearing and suggestion for rehearing denied 152 F.3d 937, certiorari denied 119 S.Ct. 799, 525 U.S. 1069, 142 L.Ed.2d 661.—*Const Law* 90.1(7.2).

N.D.Ala. 2002. Speech addresses a "matter of public concern" and is protected by First Amendment, if it relates to any matter of political, social, or other concern to the community. U.S.C.A. Const.Amend. 1.—*Burleson v. Colbert County-Northwest Alabama Healthcare Authority*, 221 F.Supp.2d 1265.—Const Law 90.1(1).

D.Colo. 2000. Conflict of interest violation committed by public official is "matter of public concern," for purposes of analyzing public employee's First Amendment retaliation claim. U.S.C.A. Const.Amend. 1.—*U.S. ex rel. Holeman v. City of Commerce City, Colo.*, 112 F.Supp.2d 1079.—Const Law 90.1(7.2).

D.Colo. 1999. Public employee's speech touches on a "matter of public concern" as required for First Amendment protection, when it can be fairly considered as relating to any matter of political, social or other concern to the community. U.S.C.A. Const.Amend. 1.—*Jandro v. Foster*, 53 F.Supp.2d 1088.—Const Law 90.1(7.2).

D.Colo. 1999. Public employee's expression that is calculated to disclose inefficiency, impropriety or other malfeasance on the part of government officials, generally constitutes a "matter of public concern" subject to First Amendment protection; in contrast, speech that pertains only to personal disputes and grievances is not subject to First Amendment protection. U.S.C.A. Const.Amend. 1.—*Jandro v. Foster*, 53 F.Supp.2d 1088.—Const Law 90.1(7.2).

D.Colo. 1999. Public employee's informal investigation into whether district attorney had sexually assaulted female employees at the district attorney's office touched on a "matter of public concern," as required for First Amendment protection; although employee may have been motivated, at least in part, by personal interests, he was also motivated by a concern similar to that shared by other citizens, that a district attorney would breach public trust if he violated laws which he had been charged with enforcing. U.S.C.A. Const.Amend. 1.—*Jandro v. Foster*, 53 F.Supp.2d 1088.—Const Law 90.1(7.2); Dist & Pros Attys 10.

D.Colo. 1999. Public employee's speech at city council meeting, regarding his support of continued retention of police chief, touched on a "matter of public concern," as required for First Amendment protection, where employee spoke at a public meeting during non-working hours, as a concerned citizen, to inform the public that police chief was satisfactorily performing his duties. U.S.C.A. Const.Amend. 1.—*Jandro v. Foster*, 53 F.Supp.2d 1088.—Const Law 90.1(7.2); Office 66.

D.Colo. 1999. Public employee's private communications to district attorney in which employee expressed his concerns about district attorney's alleged drinking on the job and his alleged off-duty drunk driving touched upon a "matter of public concern," as required for First Amendment protection; ability of district attorney to discharge his investigative and prosecutorial duties in a competent manner, without being impaired by alcohol, was a matter of concern to the community, and

district attorney's alleged failure to obey laws that he was charged with prosecuting was malfeasance in executing oath of his office. U.S.C.A. Const. Amend. 1.—*Jandro v. Foster*, 53 F.Supp.2d 1088.—Const Law 90.1(7.2); Dist & Pros Attys 10.

D.Colo. 1998. Generally, the subject of a defamation action constitutes a "matter of public concern," so that a heightened standard of proof applies under the First Amendment, whenever it embraces an issue about which information is needed or appropriate, or when the public may reasonably be expected to have a legitimate interest in what is being published. U.S.C.A. Const. Amend. 1.—*Miles v. Ramsey*, 31 F.Supp.2d 869.—Libel 112(1).

D.Colo. 1998. Statements in tabloid newspaper suggesting that neighbor of child murder victim was responsible for the murder involved a "matter of public concern," and therefore, heightened First Amendment standard applied to neighbor's defamation action against newspaper under Colorado law; murder investigation was subject of unprecedented media attention. U.S.C.A. Const.Amend. 1.—*Miles v. Ramsey*, 31 F.Supp.2d 869.—Libel 112(1).

D.Colo. 1998. Former county employee's memorandum to county board of commissioners regarding safety problems at an intersection constituted a "matter of public concern" under the First Amendment, rather than merely a private matter; although employee wrote memorandum during a period that he was in conflict with his supervisors, memo addressed safety issues involved with maintenance of road surface and removal of snow in the intersection without exposing a grader and operator to high speed traffic and did not further employee's purely private interests. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2); Counties 67.

D.Colo. 1998. Public employee's speech touches on a "matter of public concern," under First Amendment, when it can be fairly considered as relating to any matter of political, social or other concern to the community. U.S.C.A. Const. Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2).

D.Colo. 1998. Public employee's speech that is calculated to disclose inefficiency or malfeasance on the part of government officials generally constitutes a "matter of public concern," under First Amendment, while speech that pertains only to personal disputes and grievances is generally not a matter of public concern. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2).

D.Colo. 1998. Former county employee's complaints about his employment situation constituted personal grievances which were not a "matter of public concern" protected by the First Amendment. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d

1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2); Counties 67.

D.Colo. 1998. Former county employee's memorandum regarding improvements in gravel road maintenance was not a "matter of public concern" protected by the First Amendment, but rather, was communicating his ideas for improved gravel road maintenance, in his official capacity as a road grader, to the head of the county highways and engineering department. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2); Counties 67.

D.Colo. 1998. Former county employee's memorandum complaining about county's bulletin board policies, without further elaboration, concerned county's internal policies and practices which are relevant only to county employees and were therefore not a "matter of public concern" protected by the First Amendment. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2); Counties 67.

D.Colo. 1992. In determining whether public employee's speech is protected by First Amendment, court initially considers whether it relates to "matter of public concern"; speech relates to "matter of public concern" if, after analyzing its content, form, and context, it can be considered fairly as relating to any matter of political, social or other concern to community. U.S.C.A. Const.Amend. 1; *West's C.R.S.A. Const. Art. 2, § 10*.—*Erickson v. Board of County Com'rs of County of Delta, State of Colo.*, 801 F.Supp. 414.—Const Law 90.1(7.2).

D.Conn. 1996. Former city employee's speech in appealing the city's initial decision to not hire him based on his prior felony conviction was not "matter of public concern" protected by the First Amendment, and therefore the former city employee's allegation that city discharged him for such speech did not state claim under § 1983 and § 1988; former city employee did not allege that his appeal included complaint regarding system-wide discrimination in city's hiring practices, but only alleged his own personal efforts to internally grieve denial of employment. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. §§ 1983, 1988.—*Morgan v. City of Milford*, 914 F.Supp. 21.—Const Law 90.1(7.2); Mun Corp 218(3).

D.Conn. 1996. For purposes of determining whether public employee's speech is constitutionally protected, speech touches upon "matter of public concern" when it can fairly be considered as relating to any matter of political, social or other concern to the community. U.S.C.A. Const.Amend. 1.—*Morgan v. City of Milford*, 914 F.Supp. 21.—Const Law 90.1(7.2).

D.Conn. 1996. For purposes of determining whether public employee's speech is constitutionally protected, where the employee's complaints to his or her supervisors implicate system-wide discrimination, this speech unquestionably involves "matter of public concern." U.S.C.A. Const.Amend. 1.—*Mor-*

gan v. City of Milford, 914 F.Supp. 21.—Const Law 90.1(7.2).

D.D.C. 1995. Under District of Columbia law, success of major Division I women's college basketball team was "matter of public concern," for purposes of its coach's defamation action against sportswriters. U.S.C.A. Const.Amend. 1.—*Washington v. Smith*, 893 F.Supp. 60, affirmed 80 F.3d 555, 317 U.S.App.D.C. 79.—Libel 48(1).

N.D.Ill. 1999. Issue of sex discrimination in public employment is a "matter of public concern," for purposes of determining whether the government has wrongfully deprived an employee of his or her right to freedom of speech. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.—*Cleaves v. City of Chicago*, 68 F.Supp.2d 963.—Const Law 90.1(7.2).

S.D.Iowa 1999. Deputy county recorder's candidacy for position of county recorder was speech on "matter of public concern," for purposes of analyzing deputy recorder's First Amendment rights, where office had only two employees. U.S.C.A. Const.Amend. 1.—*Deemer v. Durell*, 110 F.Supp.2d 1177, affirmed 230 F.3d 1362.—Const Law 90.1(7.2).

D.Kan. 2002. Public employee's speech in displaying Confederate battle flag vanity plate with words "HERITAGE NOT HATE" on his vehicle in employee parking lot involved "matter of public concern," even if tag or words expressed thereon were not subject of "raging debate" in locale. U.S.C.A. Const.Amend. 1.—*Erickson v. City of Topeka, Kan.*, 209 F.Supp.2d 1131.—Const Law 90.1(7.2); Mun Corp 218(3).

D.Kan. 2002. Speech that calls attention to government's failure to discharge its governmental duties generally constitutes "matter of public concern," for First Amendment purposes. U.S.C.A. Const.Amend. 1.—*Beach v. City of Olathe, Kan.*, 185 F.Supp.2d 1229.—Const Law 90.1(1).

D.Kan. 2000. City employee's complaint to management alleging that his supervisor threatened to terminate older male employees was not speech on a "matter of public concern," as required to prove that termination of employee after such complaint violated the First Amendment; supervisor's comments were made during "lunch room banter," supervisor did not have the authority to fire those under him or to recommend their termination, and employee's complaint simply involved a personnel dispute. U.S.C.A. Const.Amend. 1.—*Wood v. City of Topeka, Kan., Topeka Housing Authority*, 90 F.Supp.2d 1173, amended 96 F.Supp.2d 1194, affirmed 17 Fed.Appx. 765.—Const Law 90.1(7.2); Mun Corp 218(10).

D.Kan. 2000. City employee's complaint to management alleging that his supervisor in city housing authority repeatedly refused to respond while on call to remedy problems at various city housing units was speech on a "matter of public concern," as required to prove that termination of employee after such complaint violated the First Amendment. U.S.C.A. Const.Amend. 1.—*Wood v. City of Topeka, Kan., Topeka Housing Authority*,

90 F.Supp.2d 1173, amended 96 F.Supp.2d 1194, affirmed 17 Fed.Appx. 765.—Const Law 90.1(7.2); Mun Corp 218(10).

E.D.Ky. 2000. A “matter of public concern,” for purposes of public employee’s First Amendment free speech rights, is a matter of political, social, or other concern to the community. U.S.C.A. Const. Amend. 1.—*Rose v. Stephens*, 117 F.Supp.2d 607, affirmed 291 F.3d 917, 2002 Fed.App. 194P.—Const Law 90.1(7.2).

E.D.Ky. 2000. Internal memorandum of state police commissioner, which was circulated only to his superior and which informed superior of his decision to abolish another state employee’s position and reduce his rank, did not pertain to a “matter of public concern,” and thus was not entitled to First Amendment protection; the concerns were addressed only to individuals capable of resolving internal dispute between state employees, memorandum did not allege any illegal activity by state employee, and memorandum was drafted in Commissioner’s official capacity, not as a private citizen, and only after Commissioner was confronted with rumors of his own dismissal. U.S.C.A. Const. Amend. 1.—*Rose v. Stephens*, 117 F.Supp.2d 607, affirmed 291 F.3d 917, 2002 Fed.App. 194P.—Const Law 90.1(7.2); States 53.

D.Mass. 2003. County corrections officer’s report of coworker’s misconduct for playing cards with an inmate, even if not merely of personal interest to officer, was not “matter of public concern” for purposes of First Amendment retaliation claim, given minimal level of coworker’s wrongdoing. U.S.C.A. Const. Amend. 1.—*Baron v. Hickey*, 242 F.Supp.2d 66.—Const Law 90.1(7.2); Prisons 7.

D.Mass. 2003. Alleged supervisory tolerance of harassment of county corrections officer by his coworkers, based on officer’s reporting of fellow officer’s misconduct, was a “matter of public concern” for purposes of officer’s First Amendment retaliation claim under § 1983. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Baron v. Hickey*, 242 F.Supp.2d 66.—Const Law 90.1(7.2); Prisons 7.

D.Nev. 1993. Public employee’s expression may be fairly characterized as constituting expression on “matter of public concern” so as to be protected by First Amendment when it relates to any matter of political, social or other concern to community. U.S.C.A. Const. Amend. 1.—*Knapp v. Miller*, 843 F.Supp. 633.—Const Law 90.1(7.2).

D.N.J. 2002. Assistant city attorney’s complaints that she had to perform administrative tasks such as retrieving books and making phone calls for another attorney did not involve a “matter of public concern” protected by the First Amendment; such complaints merely aired personal grievances. U.S.C.A. Const. Amend. 1.—*Sunkett v. Misci*, 183 F.Supp.2d 691.—Const Law 90.1(7.2); Mun Corp 218(3).

D.N.J. 2002. Assistant city attorney’s repeated criticism of city’s decision to remove a commercial building from the city’s property tax foreclosure list involved a “matter of public concern,” as required

to establish attorney’s § 1983 claim alleging that he was terminated in retaliation for such criticism in violation of the First Amendment; attorney believed decision to remove building from list was illegal. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Sunkett v. Misci*, 183 F.Supp.2d 691.—Const Law 90.1(7.2); Mun Corp 218(3).

D.N.J. 2002. Comments made by assistant city attorney suggesting that another city attorney was assigned to him as second chair in the middle of a trial in order to help that attorney avoid another trial for which he was unprepared involved a “matter of public concern,” as required to establish § 1983 First Amendment retaliation claim. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Sunkett v. Misci*, 183 F.Supp.2d 691.—Const Law 90.1(7.2); Mun Corp 218(3).

D.N.J. 2002. The integrity of public officers and public tribunals is a “matter of public concern,” for purposes of a public employee’s First Amendment retaliation claim. U.S.C.A. Const. Amend. 1.—*Sunkett v. Misci*, 183 F.Supp.2d 691.—Const Law 90.1(7.2).

D.N.J. 2002. Comments by assistant city attorney that city had potential conflicts in several cases and should consider retaining outside counsel did not involve a “matter of public concern,” as required to establish § 1983 claim alleging retaliation in violation of the First Amendment. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Sunkett v. Misci*, 183 F.Supp.2d 691.—Const Law 90.1(7.2); Mun Corp 218(3).

D.N.J. 2002. Assistant city attorney’s disagreement with decision to fire a coworker, which attorney believed to be illegal, concerned possible governmental misfeasance, and was therefore a “matter of public concern,” as required to establish § 1983 claim alleging retaliation in violation of the First Amendment. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Sunkett v. Misci*, 183 F.Supp.2d 691.—Const Law 90.1(7.2); Mun Corp 218(3).

D.N.J. 2001. County employee’s complaints to the state department of personnel regarding a coworker’s exercise of supervisory authority over him did not implicate a “matter of public concern,” and therefore, such complaints were not protected by the First Amendment; employee’s complaints stemmed from personal dispute with coworker regarding alleged unfair treatment he received under her supervision. U.S.C.A. Const. Amend. 1.—*Cooper v. Cape May County Bd. of Social Services*, 175 F.Supp.2d 732.—Const Law 90.1(7.2); Counties 63.

D.N.J. 2001. A public employee’s speech involves a “matter of public concern,” and is protected under the First Amendment, if it can be fairly considered as relating to any matter of political, social, or other concern to the community. U.S.C.A. Const. Amend. 1.—*Cooper v. Cape May County Bd. of Social Services*, 175 F.Supp.2d 732.—Const Law 90.1(7.2).

D.N.J. 1999. Public employee’s speech involves “matter of public concern,” and is entitled to First

Amendment protection, if it can be of political, social, or other concern to community. U.S.C.A. Const.Amend. 1.—*Carlino v. Gloucester City High School*, 57 F.Supp.2d 1, affirmed in part 44 Fed. Appx. 599.—Const Law 90.1(7.2).

S.D.N.Y. 2001. Under New York law, statements made to art community and newspaper reporters by son and daughter-in-law of deceased Russian artist, which impugned authenticity of French art collectors' works attributed to such artist, involved a "matter of public concern," and therefore, collectors had to prove falsity of statements in order to prevail on their defamation claim; collection was displayed at public exhibitions, museums, and art shows throughout the world and portions of collection were offered for sale to public.—*Boule v. Hutton*, 138 F.Supp.2d 491.—Libel 30, 48(1).

S.D.Ohio 2000. Allegations by special deputy terminated from county sheriff's department that unit for which he worked engaged in unethical financial conduct constituted speech on a "matter of public concern" as required to establish deputy's § 1983 First Amendment claim that he was terminated for making such allegations. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Gratsch v. Hamilton County Sheriff's Dept.*, 91 F.Supp.2d 1160, affirmed in part, reversed in part 12 Fed.Appx. 193.—Const Law 90.1(7.2); Sheriffs 21.

E.D.Pa. 2002. Landlord's association with investment landlord association and another association that filed lawsuits against the borough was "protected activity" involving a "matter of public concern" under the First Amendment, as required to establish claim against borough and two of its officials alleging that citations and condemnation notices against landlord's property were retaliatory; suits raised issues such as borough's licensing fees. 42 U.S.C.A. § 1983.—*Grimm v. Borough of Norristown*, 226 F.Supp.2d 606, amended 2002 WL 737497.—Const Law 91; Health 392.

E.D.Pa. 2002. In considering what constitutes a matter of public concern, for purposes of a free speech claim under the First Amendment, courts may look to the content, form, and context of the speech; if the speech relates to something that can be fairly considered as relating to any matter of political, social, or other concern to the community, then it is a "matter of public concern." U.S.C.A. Const.Amend. 1.—*Bianchi v. City of Philadelphia*, 183 F.Supp.2d 726.—Const Law 90.1(7.2).

E.D.Pa. 2001. A public employee's speech will be considered a "matter of public concern," for purposes of a public employee's § 1983 claim of illegal retaliation for protected speech, if it can be fairly considered as relating to any matter of political, social, or other concerns to the community. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.—*Lynch v. City of Philadelphia*, 166 F.Supp.2d 224.—Const Law 90.1(7.2).

E.D.Pa. 2001. Police officer's testimony on behalf of two subordinates at their criminal hearings was a "matter of public concern," for purposes of officer's § 1983 First Amendment freedom of ex-

pression action against city and its police officials, although officer may have testified under court notice, rather than subpoena. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Lynch v. City of Philadelphia*, 166 F.Supp.2d 224.—Const Law 90.1(7.2); Mun Corp 185(1).

E.D.Pa. 1999. In determining whether a public employee's speech relates to a "matter of public concern," as required for such speech to be protected from retaliation by the First Amendment, courts examine all the surrounding circumstances including the context and form of the speech, and ask whether expression of the kind at issue is of value to the process of self governance. U.S.C.A. Const. Amend. 1.—*Regan v. Township of Lower Merion*, 36 F.Supp.2d 245.—Const Law 90.1(7.2).

E.D.Pa. 1994. For purposes of public employee's First Amendment retaliation claim, "matter of public concern" is one which relates to broad social or policy issues or to way in which government office serves public, and this includes allegations of inefficiency, waste and even fraud committed by county and state governments. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.—*Mraz v. County of Lehigh*, 862 F.Supp. 1344.—Const Law 90.1(7.2).

W.D.Tenn. 2002. County employee's speech regarding county agency's pay practices, specifically whether agency head was granting some employees more paid leave than what they had earned, was "matter of public concern" for purposes of county employee's First Amendment claim. U.S.C.A. Const.Amend. 1.—*Wooley v. Madison County, Tennessee*, 209 F.Supp.2d 836.—Const Law 90.1(7.2); Counties 67.

E.D.Tex. 1993. Speech by interim president of university objecting and refusing to consent to what he felt were unauthorized and unethical, if not illegal practices on part of board of regents and university chancellor addressed "matter of public concern" and was protected by First Amendment and could not be basis for president's discharge, even though president's internal complaints were not immediately released to public and even though activities and practices to which president objected were not particularly scurrilous. U.S.C.A. Const. Amend. 1.—*Idoux v. Lamar University System*, 828 F.Supp. 1252, affirmed in part 37 F.3d 632.—Colleges 8.1(3); Const Law 90.1(7.3).

D.Wyo. 1996. For purposes of determining propriety under First Amendment of government restriction of speech of public employees, employee speech addresses "matter of public concern" if, considering its entire content, form, and context, it relates to any matter of political, social, or other concern to community. U.S.C.A. Const.Amend. 1.—*Westbrook v. Teton County School Dist. No. 1*, 918 F.Supp. 1475.—Const Law 90.1(7.2).

D.Wyo. 1996. For purposes of determining propriety under First Amendment of government restriction of speech of public employees, generally, speech by public school employee about policy or practice which can substantially and detrimentally affect welfare of children attending the school constitutes speech on "matter of public concern."

U.S.C.A. Const.Amend. 1.—*Westbrook v. Teton County School Dist. No. 1*, 918 F.Supp. 1475.—Const Law 90.1(7.3).

Cal.App. 4 Dist. 1997. For purpose of determining whether fax from public employee to unsuccessful bidders on public contract alleging conflict of interest on part of individual involved in award of contract enjoyed constitutional protection, implication of conflict of interest was “matter of public concern”; regulation of conflict of interest on part of public officials was statewide concern specifically addressed by legislature. U.S.C.A. Const.Amend. 1; West’s Ann.Cal.Gov.Code § 87100.—*Kirchmann v. Lake Elsinore Unified School Dist.*, 67 Cal. Rptr.2d 268, 57 Cal.App.4th 595.—Const Law 90.1(7.2); Offic 65.

Colo.App. 1998. Whether speech forming basis of public employee’s claim of retaliation in violation of First Amendment touches on “matter of public concern” requires examination of each statement to determine whether it relates to any matter of political, social, or other community concern. U.S.C.A. Const.Amend. 1.—*Cotter v. Board of Trustees of University of Northern Colorado*, 971 P.2d 687.—Const Law 90.1(7.2).

Colo.App. 1998. Public employee’s speech concerning use of public funds generally touches on “matter of public concern” for purposes of claim of retaliation in violation of First Amendment. U.S.C.A. Const.Amend. 1.—*Cotter v. Board of Trustees of University of Northern Colorado*, 971 P.2d 687.—Const Law 90.1(7.2).

D.C. 1996. Content of letters from pilot’s former lover to the Federal Aviation Administration (FAA) asserting that FAA’s failure to give credence to her charges that pilot had used marijuana on off-duty hours was result of discrimination against her as woman and as nonelite was “matter of public concern” since it involved grievance concerning governmental agency, and thus letter was entitled to constitutional protection in defamation action by pilot. U.S.C.A. Const.Amend. 1.—*Ayala v. Washington*, 679 A.2d 1057.—Libel 48(1).

Mass. 1998. Statement in travel guide reporting existence of multiple sexual harassment claims against owner of youth hostel open to general population addressed “matter of public concern,” for purposes of owner’s libel action against author and publishers of travel guide. U.S.C.A. Const. Amend. 1.—*Shaari v. Harvard Student Agencies, Inc.*, 691 N.E.2d 925, 427 Mass. 129.—Libel 48(1).

N.J.Super.A.D. 1987. Letter written to electorate by mayor during course of recall election attempting to justify certain personnel actions, including dismissal of building inspector, was matter of “matter of public concern,” so that inspector was required to prove actual malice by mayor to recover for alleged defamatory statements in letter, even if building inspector were not a public figure or public official; letter indicated that inspector had been dismissed for sexual harassment, and inspector was involved in movement to recall mayor and in circulation of recall petitions.—*Vassallo v. Bell*, 534 A.2d 724, 221 N.J.Super. 347.—Libel 48(2).

Or.App. 1994. “Matter of public concern” for purposes of establishing that public employee’s speech was constitutionally protected is a matter that fairly relates to political, social or other aspects of the community; it does not include speech relating to purely personal or internal administrative matters. U.S.C.A. Const.Amend. 1.—*Demaray v. State, Dept. of Environmental Quality*, 873 P.2d 403, 127 Or.App. 494, review denied 879 P.2d 1287, 319 Or. 625.—Const Law 90.1(7.2).

Or.App. 1991. “Matter of public concern” for purposes of establishing that public employee’s speech was constitutionally protected is a matter that fairly relates to political, social or other aspects of the community, and does not include speech relating to purely personal or internal administrative matters, and court considers employee’s motives in making statements, as well as the subject matter of the statements. U.S.C.A. Const.Amend. 1.—*Robson v. Klamath County Bd. of Health*, 804 P.2d 1187, 105 Or.App. 213, opinion adhered to as modified on reconsideration 818 P.2d 990, 109 Or. App. 242, review denied 836 P.2d 1345, 314 Or. 176.—Const Law 90.1(7.2).

Tex.App.—Corpus Christi 2001. High school band director’s action in secretly videotaping high school students changing clothes involved welfare of minor children and potential harm to minor children by school personnel, and as such was “matter of public concern,” for purposes of action for public disclosure of private facts, brought against television station which aired videotapes by students appearing in videotapes.—*Doe v. Mobile Video Tapes, Inc.*, 43 S.W.3d 40, rehearing overruled.—Torts 8.5(7).

MATTER OF PUBLIC IMPORT

Colo.App. 1998. Public employee’s speech which discloses evidence of corruption, impropriety, or other malfeasance on part of city officials clearly concerns “matter of public import” for purposes of claim of retaliation in violation of First Amendment. U.S.C.A. Const.Amend. 1.—*Cotter v. Board of Trustees of University of Northern Colorado*, 971 P.2d 687.—Const Law 90.1(7.2).

MATTER OF PUBLIC INTEREST

E.D.Va. 1999. Nonconsensual publication in magazine of photograph of inmate and author of book about author’s troubles with drugs and crime was “matter of public interest,” and thus did not violate inmate’s right to privacy under Virginia law, even if article was intended to boost sales of book; article reflected public interest in problem of violence and drug-related crime, and pictures in article depicted different stages of author’s life. Va.Code 1950, § 8.01–40.—*Williams v. Newsweek, Inc.*, 63 F.Supp.2d 734, affirmed 202 F.3d 262, certiorari denied 120 S.Ct. 2752, 530 U.S. 1279, 147 L.Ed.2d 1014.—Torts 8.5(7).

N.Y.City Civ.Ct. 1996. Program aired by cable television network which discussed subject of displays and discussion of public nudity concerned “matter of public interest” under exception to right of action under Civil Rights Law for use of person’s

name or image for trade purposes without consent, and thus, woman whose facial expression in response to scene of public nudity was shown in program could not bring action. *McKinney's Civil Rights Law* §§ 50, 51.—*Gaeta v. Home Box Office*, 645 N.Y.S.2d 707, 169 Misc.2d 500.—*Torts* 8.5(7).

MATTER OF PUBLIC OR GENERAL INTEREST OR CONCERN

Ariz.App. Div. 1 1976. Number of consumer complaints filed with bureau which was organized to protect public and to encourage complaints concerning commercial dealings of bureau members and manner in which such complaints were handled was a "matter of public or general interest or concern" such as to give rise to qualified privilege.—*Peagler v. Phoenix Newspapers, Inc.*, 547 P.2d 1074, 26 *Ariz.App.* 274, reversed 560 P.2d 1216, 114 *Ariz.* 309.—*Libel* 48(1).

MATTER OF RECORD

N.D.Ind. 1992. Under Indiana law, valid statutory employee liens filed against Chapter 11 debtor corporation's personal property had priority over creditor's security interest perfected under Indiana Uniform Commercial Code (UCC) two years earlier by central filing with Secretary of State; central filing of creditor's financing statement did not make creditor's security interest "matter of record" in county where employee liens were subsequently filed. *West's A.I.C.* 26-1-9-401(1)(c), 32-8-24-1, 32-8-24-2.—*Ameritrust Nat. Bank, Michiana v. Domore Corp.*, 147 B.R. 473.—*Sec Tran* 144.

MATTER OF REMEDY

N.Y. 1943. Wife's right to bring and maintain action for personal injuries and recover damages therefor against husband, in jurisdictions where such right exists, is a "substantive right", a part of the wife's cause of action and not a mere "matter of remedy".—*Coster v. Coster*, 46 N.E.2d 509, 289 N.Y. 438, 146 A.L.R. 702, motion denied 49 N.E.2d 621, 290 N.Y. 662.—*Hus & W* 203.5.

MATTER OF RIGHT

Mo.App. 1942. Under Bill of Rights provision declaring that all persons shall be bailable, except for capital offenses, where proof is "evident" or "presumption great", where evidence is clear and strong, leaving a dispassionate judgment to conclusion that offense has been committed as charged and that accused is the guilty agent and that he would probably be punished capitally, bail is not a "matter of right" and should be refused. *Mo. R.S.A. Const. art. 2, § 24*.—*Ex parte Welsh*, 162 S.W.2d 358, 236 *Mo.App.* 1129.—*Bail* 43.

N.C. 1942. Where a motion to strike irrelevant or redundant matter from a pleading is made under statute before answer or demurrer or before extension of time to plead is granted, the motion is not addressed to the trial court's discretion, but is made as a "matter of right", and an order denying motion is immediately appealable and should be decided on its merits by the Supreme Court. *C.S.* § 537.—

Parrish v. Atlantic Coast Line R. Co., 20 S.E.2d 299, 221 N.C. 292.—*App & E* 91(6).

MATTER OF SUBSTANCE

C.C.A.7 (Ill.) 1941. A grand jury's authority to return an "indictment" was a "matter of substance" and not a "matter of form" within statute providing that no indictment shall be affected by reason of any defect or imperfection in matter of form only which does not tend to prejudice of defendant. *Fed. Rules Crim. Proc. rules* 6(d), 52(a), 18 U.S.C.A. § 556.—*U.S. v. Johnson*, 123 F.2d 111, certiorari granted 62 S.Ct. 625, 315 U.S. 790, 86 L.Ed. 1193, certiorari granted *U.S. v. Sommers*, 62 S.Ct. 625, 315 U.S. 790, 86 L.Ed. 1194, reversed 63 S.Ct. 1233, 319 U.S. 503, 87 L.Ed. 1546, rehearing denied 64 S.Ct. 25, 320 U.S. 808, 88 L.Ed. 488, rehearing denied 64 S.Ct. 25, 320 U.S. 808, 88 L.Ed. 488.—*Crim Law* 1186.4(2).

Conn.Com.Pl. 1960. The intention of statute authorizing commencement of new action within one year, if action has been erased from docket for want of jurisdiction or otherwise averted or defeated by death of party or for any "matter of form," was to make the statute exceedingly broad and sweeping, and quoted phrase was used in contradistinction to "matter of substance," which embraces real merits of the controversy between the parties, and "matter of form" refers to the mode of procedure, so that any misconception as to the remedy may be included. *C.G.S.A.* § 52-592.—*Dirton v. McCarthy*, 166 A.2d 207, 22 *Conn.Sup.* 205, order set aside 177 A.2d 513, 149 *Conn.* 172, on remand 184 A.2d 69, 23 *Conn.Sup.* 384.—*Lim of Act* 130(1).

Mass. 1971. Where Massachusetts residents, who were injured in automobile accident in Massachusetts involving New York resident, initiated action in Massachusetts against New York resident by service on Massachusetts' Registrar of Motor Vehicles, but failed to send their registered mail notice to New York resident as required by Massachusetts' statute, failure was a "matter of substance" and not "matter of form" within meaning of Massachusetts statute providing that if action is commenced within time, and writ fails of sufficient service or return because of "matter of form," new action may be commenced for same cause within one year. *M.G.L.A. c. 90 §§* 3A-3C; c. 260 §§ 4, 32.—*Gifford v. Spehr*, 266 N.E.2d 657, 358 *Mass.* 658.—*Lim of Act* 130(9).

Tex.Crim.App. 1940. Under statute permitting information to be amended at any time before an announcement of ready for trial as to any "matter of form" but not as to "matter of substance," an amendment, granted prior to announcing ready for trial, striking out word "gross" before word "negligence" in body of complaint and information charging aggravated assault with an automobile constituted an amendment as to a "matter of substance" and invalidated complaint. *Vernon's Ann.C.C.P. art. 533; Vernon's Ann.P.C. art. 1149*.—*McDonald v. State*, 137 S.W.2d 1046, 138 *Tex.Crim.* 610.—*Ind & Inf* 161(5).

Tex.App.—Houston [14 Dist.] 1994. Indictment could not be amended on date of trial to add language describing the manner of deception allegedly perpetrated by defendant accused of theft; such language was descriptive of that which was legally essential to charge the crime and was thus “matter of substance.” V.T.C.A., Penal Code § 31.03(b)(1); Vernon’s Ann.Texas C.C.P. art. 28.10(b).—McCoy v. State, 889 S.W.2d 354, petition for discretionary review refused, appeal after remand 1997 WL 351083, petition for discretionary review refused.—Ind & Inf 159(2).

MATTER OF SUBSTANTIVE LAW

C.A.11 (Fla.) 1991. District court order remanding a state law wrongful death case arising out of international air crash to state court from which it was removed, on the grounds that the Warsaw Convention provided only an exclusive remedy for such actions, rather than an exclusive cause of action, was not appealable under the “matter of substantive law” exception to nonappealability. Warsaw Convention, Art. 1 et seq., 49 U.S.C.App.(1988 Ed.) § 1502 note; 28 U.S.C.A. § 1447(c).—Calderon v. Aerovias Nacionales de Colombia, 929 F.2d 599, certiorari denied 112 S.Ct. 376, 502 U.S. 940, 116 L.Ed.2d 327.—Rem of C 107(9).

MATTER OR MATTERS

E.D.Pa. 1970. Words “matter or matters”, as found in arbitration clause of automobile policy providing that “the matter or matters upon which such person and the company do not agree shall be settled by arbitration”, were broad enough to include any and all kinds of “disagreements”, where legal or factual in nature, relating to coverage under uninsured motorist provision of policy.—Gulf Ins. Co. v. American Arbitration Ass’n, 311 F.Supp. 989.—Insurance 3277.

MATTER OR THING

N.J.Ch. 1904. Within the rule that a court has no power to acquire jurisdiction of a party by service of notice outside its territorial limits except where the court is dealing with some “matter or thing” within its territorial jurisdiction, it has been held that marriage is such a “matter or thing,” so that, if a spouse is a bona fide resident and the other spouse is absent, the court may acquire jurisdiction by extraterritorial service.—Watkinson v. Watkinson, 58 A. 384, 67 N.J.Eq. 142, reversed 60 A. 931, 68 N.J.Eq. 632, 6 Am.Ann.Cas. 326, 69 L.R.A. 397.

MATTER PENDING

N.D.W.Va. 1932. Counsel’s mere announcement that defendants intended to appeal held not to constitute “matter pending,” within rule continuing “matters pending” at close of term to next term. District Court for Northern District of West Virginia Rule 14.—Brady v. Baltimore & O.R. Co., 56 F.2d 231.—Fed Civ Proc 25.

MATTER PENDING BEFORE SUCH EXTRAORDINARY SPECIAL OR TRIAL TERM

N.Y.A.D. 4 Dept. 1959. In action by Attorney General to remove defendant from public office for refusal to answer questions put to him before a grand jury drawn to attend an extraordinary special and trial term appointed by Governor, defendant’s motion to dismiss complaint and Attorney General’s cross motion to strike out certain defenses involved a “matter pending before such extraordinary special or trial term” within statute providing that a motion involving such a matter could be made returnable to the Appellate Division. Civil Practice Act, § 1210; Judiciary Law, § 149, subd. 2; Const. art. 1, § 6.—People v. O’Dowd, 188 N.Y.S.2d 651, 8 A.D.2d 468.—Courts 64(6).

MATTER PERTAINING

N.Y.Sup. 1961. Controversy regarding subcontractor’s extra work was “matter pertaining” to subcontract and “dispute, controversy, or claim” arising out of, under, or in relation to subcontract within arbitration clause.—Messina & Briante, Inc. v. Blitman Const. Corp., 223 N.Y.S.2d 533, 32 Misc.2d 21, affirmed 245 N.Y.S.2d 985, 19 A.D.2d 862, appeal dismissed 249 N.Y.S.2d 432, 14 N.Y.2d 648, 198 N.E.2d 602, appeal dismissed Messina & Briante, Matter of (Blitman Constr. Corp.), 14 N.Y.2d 689.—Arbit 7.6.

MATTER PERTAINING TO CHILDREN

Ill.App. 3 Dist. 1992. Provision in dissolution judgment for payment of child’s college expenses is “matter pertaining to children” and in nature of child support, for purposes of allowing modification of provision. S.H.A. ch. 40, ¶¶ 502 note, 513.—In re Marriage of Loffredi, 173 Ill.Dec. 933, 597 N.E.2d 907, 232 Ill.App.3d 709.—Child S 232.

MATTER PERTAINING TO PROBATE BUSINESS

Mo. 1964. Administration of testamentary trust was not “matter pertaining to probate business” within constitutional provision giving probate court jurisdiction of such matters, and statutes in so far as they purported to grant probate courts jurisdiction over administration of testamentary trusts were unconstitutional. Section 472.020 RSMo 1959, V.A.M.S.; Section 456.225 RSMo 1961 Supp., V.A.M.S.; V.A.M.S.Const. art. 5, § 16.—First Nat. Bank of Kansas City v. Mercantile Bank & Trust Co., 376 S.W.2d 164.—Courts 472.4(7).

MATTER PROPERLY CONNECTED THEREWITH

Fla. 1939. The statutory provision, prohibiting possession of alcoholic liquors in containers without state excise tax stamps, is germane to subject of statute, as expressed in title, and hence “matter properly connected therewith,” within constitutional requirement. F.S.A. §§ 562.15–562.17; F.S.A.Const. art. 3, § 16.—Cooper v. Robbins, 186 So. 800, 136 Fla. 364.—Statut 121(1).

MATTER REFERRED TO IN HIS EXAMINATION IN CHIEF

Mo. 1952. Under statute providing for cross-examination of defendant, who testifies as witness, as to "matter referred to in his examination in chief", quoted words mean things he testifies about. V.A.M.S. § 546.260.—State v. Christian, 245 S.W.2d 895.—Witn 277(4).

MATTER RELATING TO DISCIPLINE

Ariz.App. Div. 1 1983. Any investigation, informal interview, competence examination, or formal proceedings which the Board of Dental Examiners initiates pursuant to statute pertaining to discipline of denturists qualifies as a "matter relating to discipline" within meaning of statute providing that in all matters relating to discipline of denturists, the Board shall, by rule and regulation, provide for receiving the assistance and advice of denturists, and such proceedings can only be valid if the mandates of the statute requiring such assistance and advice have first been met. A.R.S. §§ 32-1295, subd. C, 32-1297.07, subds. B-D.—Caldwell v. Arizona State Bd. of Dental Examiners, 670 P.2d 1220, 137 Ariz. 396.—Health 218.

MATTER RELATING TO ESTATES AND THE AFFAIRS OF DECEDENTS

N.Y.A.D. 3 Dept. 1998. Action for wrongful death is not "matter relating to estates and the affairs of decedents" and does not support Surrogate's Court's assertion of jurisdiction over application by administrator of estate for preaction disclosure to aid in bringing wrongful death action. McKinney's SCPA 201, subd. 3.—Estate of Matter of Wallace, 667 N.Y.S.2d 768, 239 A.D.2d 14.—Courts 198.

MATTER RELATING TO GRANTS, BENEFITS, OR CONTRACTS

D.D.C. 1976. Although it would have been highly desirable for Secretary to comply with rule-making requirements of Administrative Procedure Act in issuing regulation fixing return on equity component of reasonable cost to which proprietary providers of medicare services are entitled to reimbursement, such regulation was clearly "matter relating to . . . grants, benefits, or contracts" and thus exempt from rule-making provisions of Act. 5 U.S.C.A. § 553(a); Social Security Act, § 1814(b), 42 U.S.C.A. § 1395f(b).—Humana of South Carolina, Inc. v. Mathews, 419 F.Supp. 253, affirmed in part, reversed in part 590 F.2d 1070, 191 U.S.App.D.C. 368, appeal after remand Humana, Inc. v. Heckler, 758 F.2d 696, 244 U.S.App.D.C. 376, certiorari denied 106 S.Ct. 791, 474 U.S. 1055, 88 L.Ed.2d 769.—Health 547.

MATTER RELATING TO TAKING AN APPEAL

Tex. 1978. Filing cost bond is "matter relating to taking an appeal" under rule governing filing of matters relating to taking appeal that are mailed one day or more before they are due and received not more than 10 days late. Rules of Civil Proce-

dures, rule 5.—Davies v. Massey, 561 S.W.2d 799.—App & E 387(5).

MATTER RELATING TO THE ADMINISTRATION

E.D.N.Y. 1982. Question of proposed 17% increase in pension benefits was not a "matter relating to the administration" of the pension trust fund, under the trust agreement language, nor did an impasse with respect thereto between employer and union trustees constitute a deadlock "on the administration" of the fund, under the Labor Management Relations Act; hence, matter was not subject to arbitration under the agreement, nor required under the Act. Labor Management Relations Act, 1947, § 302(c)(5)(B), 29 U.S.C.A. § 186(c)(5)(B).—Botto v. Friedberg, 568 F.Supp. 1253.—Labor 434.9.

MATTER RELATING TO THE APPROPRIATE SENTENCE

C.A.3 (N.J.) 2001. Under Rule of Criminal Procedure, where the district court relied in part on a state presentence report (PSI) at sentencing, the district court should have provided counsel with a copy of the state PSI prior to the sentencing hearing in order to afford defendant a sufficient opportunity to review it and prepare an appropriate response; the state PSI constituted a "matter relating to the appropriate sentence" within meaning of the Rule. Fed.Rules Cr.Proc.Rule 32(c)(1), 18 U.S.C.A.—U.S. v. Nappi, 243 F.3d 758.—Sent & Pun 295.

MATTER RELATING TO THE SETTLEMENT OF THE ESTATE

Wis. 1937. County court held to have jurisdiction over distribution of intestate's estate in process of administration, in accordance with contract between heirs, since contract was "matter relating to the settlement of the estate" of deceased person, within statute defining county court's jurisdiction (St.1935, §§ 253.03, 318.06(1, 2)).—In re Richardson's Estate, 271 N.W. 56, 223 Wis. 447.—Courts 472.4(6).

MATTER REVIEWABLE

Colo. 1942. Where court sustained defendant's motion to dismiss action because amended complaint failed to state a claim against defendant on which relief could be granted, and in the order granting defendant's motion plaintiff was granted 15 days to elect between stated alternatives, and record before the Supreme Court on writ of error and application for supersedeas did not disclose any election or entry of a final order of dismissal, record did not present a "matter reviewable" for Supreme Court's consideration. Rules of Civil Procedure, rule 111(a) (1).—Slifka v. Viettie, 131 P.2d 417, 110 Colo. 138.—App & E 707(1).

MATTERS

C.A.9 (Cal.) 1964. In statute providing that a final judgment in government's antitrust suit shall constitute prima facie proof against defendant as to all "matters" respecting which such judgment would

be an estoppel as between the parties, the "matters" referred to are the direct determinations of fact and law against defendant in prior suit on questions there distinctly put in issue. *Clayton Act*, § 5(a) as amended 15 U.S.C.A. § 16(a).—*Twentieth Century Fox Film Corp. v. Goldwyn*, 328 F.2d 190, certiorari denied 85 S.Ct. 143, 379 U.S. 880, 13 L.Ed.2d 87.—*Monop* 28(7.7).

S.D.Ohio 1993. Under provision of removal statute permitting remand of "all matters in which state law predominates," phrase "matters in which state law predominates" does not authorize remand of claims arising under federal law which are properly removed and which fall within district court's subject matter jurisdiction; word "matters" is reasonably construed as meaning "claims." 28 U.S.C.A. § 1441(c).—*Kabealo v. Davis*, 829 F.Supp. 923, affirmed 72 F.3d 129.—*Rem of C* 101.1.

Ind. 1936. Word "subject" in Constitution requiring act to embrace but one subject and matters properly connected therewith indicates the thing about which the legislation is had, and the word "matters" the incident or secondary things necessary to provide for its complete enforcement. Const. art. 4, § 19.—*Albert v. Milk Control Bd.*, 200 N.E. 688, 210 Ind. 283.—*Statut* 105(1).

Ind. 1934. The word "subject" as used in Const. Ind. art. 4, § 19, *Burns' Ann.St.* 1926, § 122, providing that every act shall embrace but one "subject" and "matters" properly connected therewith, which "subject" shall be expressed in the title, indicates the thing about which the legislation is had, and the word "matters" as used in such constitutional provision indicates the incidental or secondary things necessary to provide for its complete enforcement.—*Bolivar Tp. Board of Finance of Benton County v. Hawkins*, 191 N.E. 158, 207 Ind. 171, 96 A.L.R. 271.

Ind. 1907. The word "subject," as used in Const. art. 4, § 19, declaring that every act shall embrace but one subject which shall be expressed in the title, indicates the thing about which legislation is had, and the word "matters," the things which are secondary, subordinate, or incidental.—*Mull v. Indianapolis & C. Traction Co.*, 81 N.E. 657, 169 Ind. 214.—*Statut* 107(1).

Ind. 1901. In the constitutional provision that every act shall embrace but one subject and matters properly connected therewith, it is held that the words "subject" and "matter" are as nearly synonymous as it is possible for two English words to be, and that they both are used simply to avoid repetition; the only difference between them being created by the offices which they are respectively made to perform in the clause in question. It is quite evident, says the court, that the word "subject" is here used to indicate the chief thing about which a legislation is had; and "matters," the things which are secondary, subordinate, and incidental.—*Clark v. Darr*, 60 N.E. 688, 156 Ind. 692.

Ind. 1865. The word "subject," as used in Const. art. 4, § 19, declaring that every act shall embrace but one subject which shall be expressed in

the title, indicates the thing about which legislation is had, and the word "matters," the things which are secondary, subordinate, or incidental.—*Hingle v. State*, 24 Ind. 28.—*Statut* 107(1).

Kan.App. 1900. The word "facts," as used in a verification of an information that the facts therein set forth are true, will be held to be equivalent to "matters," and is used to represent the thing asserted. Hence the verification is not meaningless on the ground that facts are always true.—*State v. Grinstead*, 61 P. 975, 10 Kan.App. 74, reversed 64 P. 55, 62 Kan. 868.

Minn. 1948. The "matters" determined in action or judicial proceeding are the questions decided in determining issues raised by conflicting claims of parties, and such word in the phrases "matter in controversy," "matter in dispute" and "matter in issue" refers to cause of action asserted in complaint and issue joined thereon.—*In re Enger's Will*, 30 N.W.2d 694, 225 Minn. 229, 1 A.L.R.2d 1048.—*Judgm* 717.

Minn. 1948. In trustee's accounting, "matters" involved include transactions set forth in trustee's account and petition for allowance thereof and objections thereto, if any, and "pleadings" consist of account and petition on the one side and objections thereto on the other, and "issues" are framed by account and petition and objections thereto as the pleadings. M.S.A. § 501.35.—*In re Enger's Will*, 30 N.W.2d 694, 225 Minn. 229, 1 A.L.R.2d 1048.—*Trusts* 297.

N.Y.Sup. 1950. Appeals taken in condemnation cases and trials of certiorari proceedings for reduction of tentative tax assessments were not "matters" within partnership dissolution agreement wherein it was provided that fees from pending "matters" in which firm had been retained or had any interest in fees for legal services should be divided equally.—*Talley v. Lamb*, 100 N.Y.S.2d 112.—*Atty & C* 30.

N.Y.Co.Ct. 1932. Amendatory statute, requiring that notice of examination of adverse party before trial state "matters," not "issues," on which examination is sought, does not permit examination generally before answer. Civil Practice Act, § 290, subd. 4, as amended by Laws 1923, c. 205.—*Abels v. Rubin*, 261 N.Y.S. 85, 145 Misc. 806.—*Pretrial Proc* 123.1.

Okla. 1938. The word "matters," in statute providing that superior court of creek county should have concurrent jurisdiction with district court and county court of Creek county in all civil and criminal matters, was sufficiently broad to include not only "actions" but also "special proceedings" of a civil or criminal nature specifically cognizable by a court as such. 12 Okl.St. Ann. §§ 3-5; 20 Okl.St. Ann. § 202.—*Sheridan Oil Co. v. Superior Court of Creek County*, 82 P.2d 832, 183 Okla. 372, 1938 OK 298.—*Courts* 183.

Okla. 1938. The word "matters," in statute providing that superior court of Creek county should have concurrent jurisdiction with district court and county court of Creek county in all civil and criminal matters, had a broader meaning than the word

"actions," and was sufficiently comprehensive to vest in the superior court jurisdiction to try and determine escheat cases. 12 Okl.St. Ann. §§ 3-5; 20 Okl.St. Ann. § 202; Laws 1919, c. 172 (repealed 1937).—*Sheridan Oil Co. v. Superior Court of Creek County*, 82 P.2d 832, 183 Okla. 372, 1938 OK 298.—Escheat 6.

Va. 1914. A corporation seeking a mechanic's lien filed an account which first alleged that it showed the amount and character of the work and material furnished, and was followed by an itemized account, at the end of which was appended a statement that, after deducting the credits from the debits, there was a balance of \$7,041.93 due the corporation. The jurat of the notary which followed the signature of the corporation's agent recited that the agent made oath that the matters and things stated in the foregoing account were true, and that the account was correct. Held, that as the word "matters" means with regard to or about which anything takes place, and as the word "thing" is equivalent to a transaction or occurrence, the account was sufficient.—*John Diebold & Sons Stone Co. v. Tatterson*, 80 S.E. 585, 115 Va. 766.

Wis. 1921. The use of the word "matters" in Laws 1901, p. 231 (St. 1919, § 39.01, subd. 2), providing no review of the decisions of the state superintendent of public instruction on matters decided by him shall be had unless proceedings by certiorari or other appropriate action be brought within 30 days after such determination by him, indicates that it was intended to cover all decisions made by the state superintendent, whether the controversies in which the decisions were made reached him by way of appeal or were instituted before him in the first instance, and certiorari to review proceedings resulting in the establishment of a union free high school (section 40.47) must be brought within 30 days of his approval under subdivision 6 thereof.—*State v. Brown*, 182 N.W. 602, 174 Wis. 498.—*Schools* 42(2).

MATTERS ADDRESSED IN THE SETTLEMENT

M.D.N.C. 1995. CERCLA barred contribution claim asserted under CERCLA against potentially responsible parties (PRP) who had entered into judicially approved consent decree with United States resolving their liability for response costs incurred at environmentally contaminated sites; contribution claim apparently sought recovery for identical damages that PRPs had already paid to United States and, thus, counterclaim regarded "matters addressed in the settlement," within meaning of CERCLA provision barring contribution claims against settling PRPs. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 113(f)(2), as amended, 42 U.S.C.A. § 9613(f)(2).—*Crown Cork & Seal Co., Inc. v. Dockery*, 907 F.Supp. 147.—*Environ Law* 447.

M.D.N.C. 1995. In determining whether particular claim regards "matters addressed in the settlement," for purposes of CERCLA section barring contribution claims against settling defendants regarding matters addressed in settlement, court

should consider particular hazardous substance at issue in settlement, location of site in question, time frame covered by settlement, and cost of cleanup. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 113(f)(2), as amended, 42 U.S.C.A. § 9613(f)(2).—*Crown Cork & Seal Co., Inc. v. Dockery*, 907 F.Supp. 147.—*Environ Law* 447.

MATTERS ADVERSE TO THE ACCUSED FROM OUTSIDE THE RECORD

U.S. Armed Forces 2000. Note appended to staff judge advocate's recommendation by convening authority's chief of staff, in which chief of staff commented unfavorably on accused's character, constituted "matters adverse to the accused from outside the record" considered by the convening authority that accused had a right to be notified of and to rebut; chief of staff's comments that accused was a "thug" and that he was "lucky" he did not kill the victim were clearly adverse matters from outside the record. R.C.M. 1107(b)(3)(B)(iii).—*U.S. v. Anderson*, 53 M.J. 374.—*Mil Jus* 1386, 1393.1.

MATTERS ASSERTED

Ill.App. 1 Dist. 1997. Phrase "matters asserted" in hearsay definition, providing testimony in court regarding statement made out of court offered for truth of matters asserted, includes statements that occur in question form if declarant implicitly intended to express inference for which statement is offered.—*Estate of Parks v. O'Young*, 224 Ill.Dec. 905, 682 N.E.2d 466, 289 Ill.App.3d 976.—*Evid* 314(1).

[MATTERS] ATTENDING A GRAND JURY

Ariz.App. Div. 1 1994. Documents produced pursuant to grand jury subpoena are "[matters] attending a grand jury" and are therefore protected from disclosure by grand jury secrecy statute, even if grand jury never actually reviews documents. A.R.S. § 13-2812.—*Samaritan Health System v. Superior Court In and For County of Maricopa*, 895 P.2d 131, 182 Ariz. 219, review denied.—*Gr Jury* 41.30.

MATTERS CIVIL

Miss. 1897. Const. § 156, gives the circuit court original jurisdiction of "all matters civil" not vested in some other court. Section 159 gives the chancery court jurisdiction of matters in equity, probate, etc., and section 160 provides that, in addition to the jurisdiction of the chancery court to try title and cancel clouds on title, it may "in such cases" decree and displace possession. Held, that the circuit court has jurisdiction of actions of ejectment; "matters civil," in section 156, meaning matters of common-law cognizance.—*Illinois Cent. R. Co. v. Le Blanc*, 21 So. 760, 74 Miss. 650.—*Eject* 36.

MATTERS COGNIZABLE BY HABEAS CORPUS

Ark. 1992. Habeas petitioner's allegations that he was charged by information rather than indict-

ment and that he was never afforded "first appearance" before being bound over to circuit court were not "matters cognizable by habeas corpus."—*Griswold v. Lockhart*, 822 S.W.2d 388, 308 Ark. 265.—*Hab Corp* 472, 474.

MATTERS COMMUNICATED

Ind.App. 4 Dist. 1987. "Matters communicated," as used in statute to cover privileged information between physician and patient, are defined by idea or concept that relationship between doctor and patient is personal relationship and thus, covered contact is for direct benefit of patient, rather than for third party. IC 34-1-14-5 (1982 Ed.)—*State v. Jagers*, 506 N.E.2d 832, rehearing denied, and transfer denied.—*Witn* 208(1).

MATTERS CONCERNING THE ADMINISTRATION OF THE ESTATE

S.D.N.Y. 1996. For purposes of statute governing core proceedings, phrase "matters concerning the administration of the estate" pertains to matters that are integral, if not essential, to the administration of the estate, but does not apply to matters that are only tangential to the administration of the estate. 28 U.S.C.A. § 157(b)(2)(A).—*In re Chateaugay Corp.*, 193 B.R. 669.—*Bankr* 2047.

E.D.Pa. 2001. Proceedings based upon postpetition causes of action are "matters concerning the administration of the estate," which fall within "core" jurisdiction of bankruptcy court. 28 U.S.C.A. § 157(b)(2)(A).—*Northwestern Institute of Psychiatry, Inc. v. Travelers Indem. Co.*, 272 B.R. 104, on reconsideration.—*Bankr* 2047.

Bkrtcy.W.D.Wis. 1985. Actions to assume or reject executory contracts are "matters concerning the administration of the estate," and thus are "core proceedings." 28 U.S.C.A. § 157(b)(1), (b)(2)(A).—*Matter of Republic Oil Corp.*, 51 B.R. 355.—*Bankr* 2047.

MATTERS CONCERNING THE PUBLIC PEACE, PUBLIC SAFETY AND PUBLIC JUSTICE

N.Y. 1951. Organized crime and its relationship to Government in New York State are "matters concerning the public peace, public safety and public justice," within subdivision of Executive Law providing that Attorney General, may with approval of Governor, and when directed by Governor, should inquire into matters concerning the public peace, public safety and public justice. Executive Law, § 63, subd. 8.—*In re Di Brizzi*, 101 N.E.2d 464, 303 N.Y. 206.—*Crim Law* 1224(1).

MATTERS CONNECTED WITH SERVICE

La.App. 1 Cir. 1962. Electric company's furnishing or attempted furnishing of electric energy constituted "matters connected with service" to be given within constitutional provision that power, authority, and duties of public service commission shall affect and include all matters and things connected with, concerning, and growing out of service to be given or rendered by public utility. LSA—Const. art. 6, § 4.—*Pointe Coupee Elec. Member-*

ship Corp. v. Central La. Elec. Co., 140 So.2d 683.—*Electricity* 2.1.

MATTERS COVERED BY SUCH ACCOUNT

N.Y.Sup. 1942. In inter vivos trust providing that written acceptance of beneficiary entitled to income of the correctness of any account rendered by trustees should discharge trustees with respect to "matters covered by such account", the quoted phrase related only to matters in which the life beneficiary was interested, namely, income, as affecting conclusiveness on remaindermen of life beneficiary's acceptance of trustees' account.—*In re Crane*, 34 N.Y.S.2d 9.—*Trusts* 296.

MATTERS COVERED BY SUCH COST REPORTS

S.D.Ohio 1985. Provider Reimbursement Review Board review of medicare reimbursement need not be limited to costs claimed by the provider to the intermediary in the cost report; hence, the Board erred in concluding that it lacked jurisdiction over claims of provider hospitals which filed cost reports with fiscal intermediary in compliance with new medical malpractice reimbursement rule and thereby "self-disallowed" reimbursement for the additional portion of malpractice insurance costs allowable under the old rule; malpractice cost disclosed on hospitals' cost reports but not claimed by the providers as reimbursable costs were "matters covered by such cost reports," within meaning of statute governing Board's review jurisdiction. Social Security Act, § 1878(d), as amended, 42 U.S.C.A. § 1395oo (d).—*Bethesda Hosp. v. Heckler*, 609 F.Supp. 1360, affirmed in part, reversed in part 810 F.2d 558, certiorari granted 108 S.Ct. 64, 484 U.S. 813, 98 L.Ed.2d 28, reversed 108 S.Ct. 1255, 485 U.S. 399, 99 L.Ed.2d 460.—*Health* 535(4).

MATTERS DEHORS RECORD

Ill.App. 1 Dist. 1923. On certiorari by discharged policeman to bring up proceedings of civil service commission transcript of testimony considered by commissioners would not be stricken from return as "subsequent proceedings" or "matters dehors record" where transcribed after writ of certiorari was issued since "proceedings" are intrinsic acts in process of litigation not manual clerical work of transcribing evidence and making of record.—*McCarthy v. Geary*, 229 Ill.App. 414.—*Cert* 53.

MATTERS DETERMINED

Minn.App. 2002. The "matters determined" in an action or judicial proceeding, for purposes of res judicata, are the questions decided in determining the issues raised by the conflicting claims of the parties.—*In re Estate and Trust of Anderson*, 654 N.W.2d 682.—*Judgm* 717.

MATTERS EMBRACED THEREIN

Mont. 1960. Findings of fact and conclusions of law were within quoted portion of statute providing that appeal stays all further proceedings in trial court upon judgment or order appealed from or

upon "matters embraced therein", and trial court could not amend its findings after appeal had been taken, except to correct clerical errors therein. R.C.M.1947, § 93-8011.—*Polson v. Thomas*, 357 P.2d 349, 138 Mont. 533.—App & E 440.

MATTERS INCIDENT TO AN ESTATE

Tex.Civ.App.—Tyler 1977. Statute providing that all courts exercising original probate jurisdiction shall have power to hear all "matters incident to an estate" applies only to those matters in which the controlling issue is the settlement, partition or disposition of an estate and means that the statutory probate court has exclusive jurisdiction only in those instances where a probate proceeding, such as the administration of an estate, is pending in the statutory probate court at the time the suit is filed. V.A.T.S. Probate Code, § 5.—*Sumaruk v. Todd*, 560 S.W.2d 141.—Courts 472.4(1).

MATTERS IN CONTROVERSY

C.C.A.9 (Or.) 1937. "Matters in controversy," as used in statute providing that District Court shall have original jurisdiction in all suits in which the matter in controversy exceeds \$3,000, are the rights which plaintiffs assert and seek to have protected and enforced (Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1)).—*Gavica v. Donagh*, 93 F.2d 173.—Fed Cts 336.1.

C.C.A.9 (Or.) 1937. The "matters in controversy," set out in a complaint which alleged the right of four different groups of plaintiffs to graze sheep on public lands of the United States without alleging any common undivided interest, could not be aggregated for the purpose of conferring jurisdiction, notwithstanding allegation that plaintiffs were suing on behalf of others similarly situated (Jud. Code Sec. 24(3), 28 U.S.C.A. 41(1)).—*Gavica v. Donagh*, 93 F.2d 173.—Fed Cts 356.

E.D.Ky. 1942. In action for amount paid under protest as annual life policy premium, and for an adjudication that policy remain in effect without further payment of premiums because of provision of policy waiving premium payments while insured was totally and permanently disabled, judgment to which insured would be entitled under Kentucky law if he prevailed would not be 'res judicata' with respect to future premium payments, and therefore premiums which would accrue during life expectancy of insured were not "matters in controversy" in determining federal court's jurisdiction on ground of diversity of citizenship. Jud. Code Sec. 24(1), 28 U.S.C.A. 41(1).—*Asbury v. New York Life Ins. Co.*, 45 F.Supp. 513.—Fed Cts 342.

MATTERS IN DISPUTE

Nev. 1936. In suit in state court for adjudication that purchaser at execution sale hold property in trust for amount of assigned claim on which judgment was obtained and for judgment on assigned claim for attorney's fees, plaintiff's right to receive amount of assigned claim out of proceeds of property and to recover amount of attorney's fees held "matters in dispute," so that defendant was not entitled to removal of cause to federal court, where

amount of recovery by plaintiff would not exceed \$818, notwithstanding that entire property from which claims were sought to be satisfied exceeded \$3,000 in value. Jud.Code §§ 24(1), 28, 28 U.S.C.A. §§ 41(1), 71.—*Golden v. Sixth Judicial Dist. Ct. in and for Pershing County*, 58 P.2d 1042, 57 Nev. 114.—Rem of C 73.

MATTERS IN EQUITY

Miss. 1897. There has always been a well-recognized distinction under the various statutes and laws of Mississippi between "matters civil" and "matters in equity." The Constitution of 1869 gave the circuit court jurisdiction in all matters civil, and provided for the establishment of the chancery court with full jurisdiction of all matters of equity. *Simrall*, in *Bell v. City of West Point*, 51 Miss. 270, in reference to the language used in conferring jurisdiction on the circuit court, says: "Dwelling a moment on the language used, it is broad enough to embrace suits at common law as well as in equity—all matters civil. But that language had the purpose of creating a common-law cognizance, and we therefore give that import to the words." The framers of the Constitution evidently intended by all "matters civil" to mean "matters of common-law cognizance."—*Illinois Cent. R. Co. v. Le Blanc*, 21 So. 760, 74 Miss. 650.

MATTERS IN ISSUE

D.Neb. 1946. "Matters in issue" in a former action between same parties on a different cause of action, the decision on which matters is relied upon as creating an estoppel by judgment, are the ultimate facts as developed by the pleadings and the evidence on matters upon which plaintiff proceeds by his action and which defendant controverts by his pleading.—*U.S. v. Cathcard*, 70 F.Supp. 653.—Judgm 719.

Ind. 1903. By the term "matters in issue" must be included not only the object of the suit or the particular right or defense sought to be recovered or established, but all the facts material to the issue from which such object or remedy, cause of action, or defense was deduced.—*Gutheil v. Goodrich*, 66 N.E. 446, 160 Ind. 92.

Mich. 1936. Judgment is "res judicata" so as to constitute bar to claim in subsequent action only where rendered upon merits upon same matters in issue and between same parties or their privies, "matters in issue" being that matter upon which plaintiff proceeds by his action and which defendant controverts by his pleadings.—*Rogers v. Detroit Auto. Inter-Insurance Exchange*, 266 N.W. 386, 275 Mich. 374.—Judgm 540.

Mo.App. 1944. "Matters in issue" under doctrine of res judicata mean ultimate facts or state of facts in dispute, and not evidentiary facts; that matter upon which the plaintiff proceeds by his action and which the defendant controverts by his pleadings.—*Christy v. Great Northern Life Ins. Co.*, 181 S.W.2d 663, 238 Mo.App. 525.—Judgm 717.

N.H. 1954. "Matters in issue" are those matters upon which plaintiff proceeds by his action, and

which defendant controverts by his pleadings.—*Lucas v. Cate*, 106 A.2d 200, 99 N.H. 134.—Plead 370.

N.H. 1927. Under principle of *res judicata*, parties to judgment are concluded as all “matters in issue.”—*Burleigh v. Wong Sung Leon*, 139 A. 184, 83 N.H. 115.—Judgm 719.

N.H. 1905. The matters which plaintiff must allege in his declaration and the defendant deny in his plea are necessary “matters in issue.” In an action on a liquor dealer’s bond, whether the dealer’s failure to comply with the provisions of the statute in applying for a license was a “matter in issue” is to be determined by deciding whether the licensee’s failure to comply with the provisions is a matter the state must allege and the licensee deny.—*State v. Corron*, 62 A. 1044, 73 N.H. 434, 6 Am. Ann. Cas. 486.

S.C. 1949. A “judgment” is “*res judicata*” so as to bar a claim in a subsequent action only where rendered upon merits upon same matters in issue and between same parties or their privies, “matters in issue” being that matter upon which plaintiff proceeds by his action and which defendant controverts by his pleading.—*Griggs v. Griggs*, 51 S.E.2d 622, 214 S.C. 177.—Judgm 540.

MATTERS IN LITIGATION

Tex.App.—San Antonio 1994. Phrase “matters in litigation” as used in enacting legislation for amendment to statute to allow interlocutory review of order denying motion for summary judgment that is based in whole or in part upon claim against or defense by members of electronic and print media based on certain state or federal free speech rights includes entire substance of lawsuit, not merely part of litigation parties have actively contested, and was simply another way of saying “suits filed” or “pending litigation.” V.T.C.A., Civil Practice & Remedies Code § 51.014(6); V.T.C.A., Government Code § 311.023.—*H & C Communications, Inc. v. Reed’s Food Intern., Inc.*, 887 S.W.2d 475, rehearing denied.—App & E 70(8).

MATTERS IN PAIS

Mo. 1933. At common law, “estoppel” is founded on deeds and judicial records, and “matters in pais” were mere evidence, but, in equity, “matters in pais” give rise to “equitable estoppel” or “estoppel in pais” which may also be enforced in court of law.—*McQuitty v. McQuitty*, 61 S.W.2d 342, 332 Mo. 1057.—Estop 52(1).

MATTERS IN WHICH STATE LAW PREDOMINATES

S.D. Ohio 1993. Under provision of removal statute permitting remand of “all matters in which state law predominates,” phrase “matters in which state law predominates” does not authorize remand of claims arising under federal law which are properly removed and which fall within district court’s subject matter jurisdiction; word “matters” is reasonably construed as meaning “claims.” 28 U.S.C.A. § 1441(c).—*Kabealo v. Davis*, 829

F.Supp. 923, affirmed 72 F.3d 129.—Rem of C 101.1.

MATTERS IN WRITING AND ON FILE

Or. 1931. Code 1930, § 2-301, subd. 6, authorizes written instructions, and section 2-704 provides that no exception need be taken to decision on matter of law when made wholly on matters in writing and on file in court. The court’s instructions, however, did not constitute a decision on “matters in writing and on file,” like a decision on a motion or demurrer, but consisted of narrative delineating issues awaiting jury’s decision and principles of law applicable thereto.—*Brown v. Jones*, 3 P.2d 768, 137 Or. 520.

MATTERS OBSERVED BY POLICE OFFICERS AND OTHER LAW ENFORCEMENT PERSONNEL

C.A.2 (N.Y.) 1977. Documentary exhibits purporting to be official report and accompanying worksheet of United States Customs Service chemist who analyzed white powdery substance seized from defendant’s companion could be characterized as reports of “factual findings resulting from an investigation made pursuant to authority granted by law” and as records of “matters observed by police officers and other law enforcement personnel”, within federal rule of evidence, and were not within “public records” hearsay exception where Government had such factual findings admitted against accused in criminal case. Federal Rules of Evidence, rule 803(8)(B), 28 U.S.C.A.—*U.S. v. Oates*, 560 F.2d 45, on remand 445 F.Supp. 351, affirmed 591 F.2d 1332.—Crim Law 429(1).

MATTERS OBSERVED PURSUANT TO DUTY IMPOSED BY LAW

Mich.App. 1980. Report prepared by National Highway Transportation safety Administration which purportedly detailed investigation of wheel accidents was a report related to “matters observed pursuant to duty imposed by law” within meaning of evidentiary rule despite fact that agency ultimately disagreed with report and never issued report. MRE 803(8)(B); National Traffic and Motor Vehicle Safety Act of 1966, §§ 1 et seq., 151–158 as amended 15 U.S.C.A. §§ 1381 et seq., 1411–1418.—*Graham v. Joseph T. Ryerson & Sons*, 292 N.W.2d 704, 96 Mich.App. 480, appeal after remand 357 N.W.2d 666, 137 Mich.App. 215.—Evid 333(7).

MATTERS OCCURRING BEFORE A GRAND JURY

C.A.11 (Fla.) 1988. Financial documents, which were obtained through grand jury subpoena in investigation of taxpayer’s accountant for mail fraud but which were never presented to grand jury, were not “matters occurring before a grand jury”; therefore, documents were not subject to provisions of rules protecting grand jury secrecy and documents were admissible in prosecution of taxpayer for failure to file income tax returns. Fed. Rules Cr. Proc. Rule 6(e)(2), (e)(3)(B), 18 U.S.C.A.; 26 U.S.C.A.

§ 7203.—U.S. v. Phillips, 843 F.2d 438.—Gr Jury 41.30.

MATTERS OCCURRING BEFORE DEATH OF DECEASED

N.M. 1934. In replevin by administrator to recover cattle allegedly owned by intestate, son's claim that intestate's cattle died and that he replaced them but retained title related to "matters occurring before death of deceased," and required corroboration. Comp.St.1929, § 45-601.—Gillespie v. O'Neil, 28 P.2d 1040, 38 N.M. 141.—Witn 183.5.

MATTERS OCCURRING BEFORE THE GRAND JURY

C.A.D.C. 1998. "Matters occurring before the grand jury," as used in rule prohibiting disclosure of such matters, includes not only what has occurred and what is occurring, but also what is likely to occur. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—In re Motions of Dow Jones & Co., 142 F.3d 496, 330 U.S.App.D.C. 48, certiorari denied Dow Jones & Co., Inc. v. Clinton, 119 S.Ct. 60, 525 U.S. 820, 142 L.Ed.2d 47, appeal after remand In re Sealed Case, 199 F.3d 522, 339 U.S.App.D.C. 309.—Gr Jury 41.30.

C.A.2 1992. Taxpayers' bank records were admissible into evidence against them in tax court, as they were not "matters occurring before the grand jury" within meaning of rule prohibiting disclosure of such matters, even though records had previously been subject of grand jury subpoena; records were sought for their own sake and not to learn what took place before grand jury, and they did not compromise secrecy of grand jury's deliberations. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—DiLeo v. C.I.R., 959 F.2d 16, certiorari denied 113 S.Ct. 197, 506 U.S. 868, 121 L.Ed.2d 140.—Gr Jury 41.50(7).

C.A.5 (Ga.) 1980. Secrecy provisions of rule governing disclosure of "matters occurring before the grand jury" applies not only to disclosures of events which have already occurred before the grand jury, such as a witness' testimony, but also to disclosure of matters which will occur, such as statements which reveal the identity of persons who will be called to testify or which report when the grand jury will return an indictment. Fed.Rules Cr.Proc. Rule 6(e), 18 U.S.C.A.—In re Grand Jury Investigation, 610 F.2d 202.—Gr Jury 41.30.

C.A.7 (Ill.) 1985. For purposes of rule prohibiting disclosure of grand jury records, "matters occurring before the grand jury" do not include every document of which grand jury happens to have custody; if document is sought for its own sake rather than to learn what took place before grand jury, and if its release will not seriously compromise secrecy of grand jury's deliberations, rule does not forbid its release. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—Matter of Special March 1981 Grand Jury, 753 F.2d 575.—Gr Jury 41.30.

C.A.7 (Ill.) 1985. Records which pharmacies had turned over to federal grand jury, which were chiefly medical or financial records which contained

no defamatory or embarrassing material, were not "matters occurring before the grand jury," and thus, United States Attorney was free to turn over such records to state in regard to its audit of pharmacies' medicaid practices. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—Matter of Special March 1981 Grand Jury, 753 F.2d 575.—Gr Jury 41.30.

C.A.4 (Md.) 1990. Substantive content of "matters occurring before the grand jury" within meaning of grand jury secrecy rule can be anything that may reveal what has transpired before grand jury. Fed.Rules Cr.Proc.Rule 6(e)(2), 18 U.S.C.A.—In re Grand Jury Subpoena, 920 F.2d 235.—Gr Jury 41.30.

C.A.6 (Mich.) 1988. Generally, confidential documentary information, not otherwise public, obtained by grand jury by coercive means is presumed to be "matters occurring before the grand jury" so as to be protected from disclosure just as much as testimony before grand jury; moving party may seek to rebut presumption by showing that information is public or was not obtained through coercive means or that disclosure would be otherwise available by civil discovery and would not reveal nature, scope, or direction of grand jury inquiry, but moving party must bear burden of making that showing, just as it bears burden of showing that there is particularized need. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—In re Grand Jury Proceedings, 851 F.2d 860.—Gr Jury 41.50(10).

C.A.7 (Wis.) 1982. When particular document is sought only "for its own sake - for its intrinsic value in the furtherance of a lawful investigation," it does not necessarily constitute "matters occurring before the grand jury" for purposes of protection against disclosure of what actually took place during grand jury proceedings. Fed. Rules Cr. Proc. Rule 6(e), 18 U.S.C.A.—Matter of Grand Jury Proceedings, Miller Brewing Co., 687 F.2d 1079, on rehearing 717 F.2d 1136.—Gr Jury 41.30.

D.D.C. 1998. "Matters occurring before the grand jury" as specified in grand jury secrecy rule may encompass documents, as well as grand jury transcripts; however, documents are not cloaked with secrecy merely because they are presented to a grand jury. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—Alexander v. F.B.I., 186 F.R.D. 102.—Gr Jury 41.30.

S.D.Fla. 1988. Tax returns and accounting records for which defendant was custodian would easily reveal pattern of grand jury investigation of defendants for tax fraud and conspiracy and were protected under secrecy rule as "matters occurring before the grand jury." Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—U.S. v. Stanton, 689 F.Supp. 1103.—Gr Jury 41.50(4).

E.D.Mich. 1990. "Matters occurring before the grand jury," within meaning of rule prohibiting disclosure of "matters occurring before the grand jury," include transcript of testimony of witnesses and statements made before grand jury, internal governmental memoranda that reflect what transpired before grand jury, witness interviews and auditor's analyses that have been prepared for

grand jury use, and information which reveals identities of witnesses or jurors, substance of testimony or evidence, and deliberations or questions of grand jury. Fed.Rules Cr.Proc.Rule 6(e)(2), 18 U.S.C.A.—Matter of Grand Jury Investigation (90-3-2), 748 F.Supp. 1188.—Gr Jury 41.30.

N.D.Ohio 1981. Witnesses' names are "matters occurring before the grand jury" and are entitled to secrecy for the same reason and for the same basis as transcripts of testimony. Fed.Rules Cr.Proc. Rule 6(e), 18 U.S.C.A.—U.S. v. White Ready-Mix Concrete Co., 509 F.Supp. 747.—Gr Jury 41.30.

S.D.Ohio 2000. Public records or documents in the possession of the grand jury, and documents voluntarily provided to the grand jury, did not constitute "matters occurring before the grand jury," and thus were not subject to grand jury secrecy rule. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—In re Grand Jury Proceedings, 196 F.R.D. 57.—Gr Jury 41.30.

D.Or. 1985. Affidavits filed before initiation of grand jury proceedings are not necessarily considered to be "matters occurring before the grand jury" within meaning of disclosure rule. Fed.Rules Cr.Proc.Rule 6(e)(3)(C)(i), 18 U.S.C.A.—In re Grand Jury Proceedings (Daewoo), 613 F.Supp. 672.—Gr Jury 41.50(2).

D.R.I. 1982. Such things as scope and direction of federal grand jury investigation constitute "matters occurring before the grand jury," and are therefore protected from disclosure by provisions of federal rule of criminal procedure governing recording and disclosure of grand jury proceedings. Fed.Rules Cr.Proc. Rule 6(e), 18 U.S.C.A.—In re Doe, 537 F.Supp. 1038.—Gr Jury 41.30.

E.D.Va. 1996. "Matters occurring before the grand jury," as term was used in criminal procedural rule prohibiting disclosure of such matters, did not cover financial records submitted to grand jury by financial institutions, now seeking to trace payments made to perpetrators of fraud in order to recover from perpetrators' assets; request was not made with purpose of determining what took place before grand jury, and disclosure would not reveal any secret aspect of grand jury's deliberations. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.—U.S. v. Reinert, 934 F.Supp. 721.—Crim Law 627.9(1).

Ohio 1993. Grand jury subpoenas and witness book involved "matters occurring before the grand jury" within meaning of secrecy rule limiting disclosure of matters occurring before grand jury. (Per curiam opinion of three Justices with one Justice concurring in judgment.) Rules Crim.Proc., Rule 6(E).—State ex rel. Beacon Journal Publishing Co. v. Waters, 617 N.E.2d 1110, 67 Ohio St.3d 321, 1993-Ohio-77.—Gr Jury 41.30.

MATTERS OF ADJUDICATION

Ohio 1988. Procedures governing findings by district hearing officers on issue of continued temporary total compensation are not exempt from rule-making requirements as "matters of adjudication." R.C. § 119.01(A).—State ex rel. Eaton

Corp. v. Lancaster, 534 N.E.2d 46, 40 Ohio St.3d 404, on rehearing 541 N.E.2d 64, 44 Ohio St.3d 106.—Admin Law 392.1; Work Comp 1092.

MATTERS OF ADMINISTRATION

S.C.App. 1984. Administrator's action to dissolve a lien of a creditor of the estate is neither in furtherance of establishing and paying the debts of the deceased nor of distributing the personal estate and thus does not fall within the category of "matters of administration" over which probate court has jurisdiction. Code 1976, § 14-23-1150.—Shelley v. South Carolina Dept. of Mental Health, 322 S.E.2d 687, 283 S.C. 344.—Courts 198.

MATTERS OF AVOIDANCE

Mont. 1992. Exclusivity and coemployee immunity under the Workers' Compensation Act are "matters of avoidance" which must be pleaded affirmatively, and are waived if not timely raised. Rules Civ.Proc., Rules 8, 8(a-c); MCA 39-71-101 et seq.—Brown v. Ehler, 841 P.2d 510, 255 Mont. 140.—Work Comp 2229.

MATTERS OF COMMON-LAW COGNIZANCE

Miss. 1897. There has always been a well-recognized distinction under the various statutes and laws of Mississippi between "matters civil" and "matters in equity." The Constitution of 1869 gave the circuit court jurisdiction in all matters civil, and provided for the establishment of the chancery court with full jurisdiction of all matters of equity. Simrall, in *Bell v. City of West Point*, 51 Miss. 270, in reference to the language used in conferring jurisdiction on the circuit court, says: "Dwelling a moment on the language used, it is broad enough to embrace suits at common law as well as in equity—all matters civil. But that language had the purpose of creating a common-law cognizance, and we therefore give that import to the words." The framers of the Constitution evidently intended by all "matters civil" to mean "matters of common-law cognizance."—*Illinois Cent. R. Co. v. Le Blanc*, 21 So. 760, 74 Miss. 650.

MATTERS OF CONTRACT

Ark. 1911. Const. art. 7, § 40, declares justices of the peace shall have jurisdiction exclusive of the circuit court in all matters of contract, where the amount in controversy does not exceed \$100. *Held*, that "matters of contract" embrace an action for unliquidated damages founded on a contract, and the circuit court had no jurisdiction of an action to recover \$100 as damages for breach of a contract employing plaintiff to sell land.—*Smith v. Taylor*, 134 S.W. 634, 97 Ark. 424.—J P 43(1).

MATTERS OF FACT

Cal. 1901. The term "matters of fact," used in Const. art. 6, § 19, declaring that judges shall not charge juries with respect to matters of fact, includes the facts contested or in some degree sought to be established by the evidence. An instruction, in proceedings to condemn private property for the construction of a sewer, that there was no evidence

to show any necessity to take the defendant's property, and adding that the jury were not obliged to find for the defendant, but might find to the contrary was a charge with respect to matters of fact.—*City of Santa Ana v. Gildmacher*, 65 P. 883, 133 Cal. 395.

Mo. 1906. The word "fact," as used in the proposition that representations must consist of "matters of fact," distinguishes "fact" from mere matters of opinion.—*Brown v. South Joplin Lead & Zinc Min. Co.*, 92 S.W. 699, 194 Mo. 681.

MATTERS OF FORM

Ill.App. 5 Dist. 1884. "Clerical errors" or "matters of form," which may be corrected at any time by court, are those errors, mistakes or omissions which are not deliberate result of judicial reasoning and determination, and an error is not considered to be a judicial error merely because its correction alters a party's obligations.—*Ashline v. Verble*, 85 Ill.Dec. 804, 474 N.E.2d 764, 130 Ill.App.3d 544.—Judgm 306.

Ind.App. 1894. In pleadings the term "matters of form" is used to designate the established mode of expression or practice; a fixed way of proceeding. If the right of the party pleading sufficiently appear to the court, although the pleadings did not conform to the established mode of procedure, a pleading is said to be defective in matter of form; but if the right does not sufficiently appear to the court the pleading is defective in matter of substance.—*Lake Shore & M. S. Ry. Co. v. Kurtz*, 37 N.E. 303, 10 Ind.App. 60.

Iowa 1981. Testimony as to "matters of form" as phrase is used in statute stating in part that except where testimony goes merely to formal matters, if the court sustains said motion, the defendant shall elect whether said cause shall be continued on his own motion, or the witness shall then testify, should not be construed to refer to testimony relating to the substance of the offense. Rules of Criminal Procedure, Rule 18, subd. 5.—*State v. Buford*, 308 N.W.2d 31.—Crim Law 589(1).

MATTERS OF LAW

C.C.A.10 (Colo.) 1943. Representations that single premium assurance and annuity contract was an insurance contract and that benefits payable to beneficiaries were free from federal estate taxes were representations as to "matters of law" as respects right to cancel policies for misrepresentations.—*Fawcett v. Sun Life Assur. Co. of Canada*, 135 F.2d 544, 153 A.L.R. 533.—Insurance 1969.

C.C.A.10 (Colo.) 1943. Representations that amount payable under single premium assurance and annuity contract on death was insurance free from federal estate tax, that insurer and its attorneys were experts and learned in law and had given matter careful investigation and that assured should not consult his own attorney were within exception to rule that representations as to "matters of law" are not actionable.—*Fawcett v. Sun Life Assur. Co. of Canada*, 135 F.2d 544, 153 A.L.R. 533.—Insurance 1969.

MATTERS OF LEGAL AVOIDANCE

N.C. 1904. The term "matters of legal avoidance," as used in the statement that a recognizance is in the nature of a conditional judgment, subject only to such matters of legal avoidance as may be shown by plea, or to such matters of relief as may induce the court to remit or mitigate a forfeiture, refers to such matters as are entirely consistent with the truth of the facts stated in the record and furnish a legal excuse for the failure of the defendant to appear according to the condition of his recognizance. The sureties, for example, show, in answer to the scire facias, the death of the principal before the time for his appearance had arrived, or that he had been arrested under other process issued at the instance of the state, or that he had become insane. All pleas of this kind are not only consistent with the truth of what is averred in the record, but they are predicated on the assumption of such truth.—*State v. Morgan*, 48 S.E. 604, 136 N.C. 593.

MATTERS OF PRACTICE AND PROCEDURE

Tex.App.—Waco 1990. Workers' compensation statute granting injured employee privilege to have physician or chiropractor of employee's own selection present to participate in medical examinations does not apply to trial de novo proceedings but, rather, medical examinations ordered in such proceedings are controlled exclusively by Rule of Civil Procedure governing physical and mental examinations of persons; phrase "matters of practice and procedure," within meaning of Rule of Civil Procedure providing that "[a]ll portions of the workers' compensation law . . . which relate to matters of practice and procedure are hereby adopted . . . as rules of court" refers only to matters of practice and procedure in district court. *Vernon's Ann. Texas Rules Civ.Proc.*, Rules 167a, 820; *Vernon's Ann. Texas Civ.St. art. 8307*, §§ 4, 4(b).—*Moore v. Johnson*, 785 S.W.2d 176.—Work Comp 1914.

MATTERS OF PROBATE

Cal. 1932. "Matters of probate" within probate court's jurisdiction do not include claims against heir or devisee for his portion of estate, arising subsequent to ancestor's death, whether claim arises by virtue of contract or in invitum.—*Parr v. Reyman*, 12 P.2d 440, 215 Cal. 616.—Des & Dist 142.

Cal. 1911. Code Civ.Proc. § 1678 (repealed 1931. See Prob.Code, §§ 1100–1106), authorizing a court of probate to order distribution of a decedent's estate, though some of the heirs, legatees, or devisees have conveyed their shares, applies only where no question arises on the distribution as to the conveyances having been made; and, where the fact of conveyance is disputed or its validity is in issue, the question is not within probate jurisdiction; "matters of probate" including the determination of the persons succeeding to the estate of a decedent, either as heir, devisee, or legatee, the amount to which each is entitled, and the construction of the will, but not including a determination of claims against heirs or devisees for their portion

arising subsequent to decedent's death.—In re Howe's Estate, 118 P. 515, 161 Cal. 152.—Ex & Ad 314(2).

Cal. 1902. The words "matters of probate," as used in the Constitution, vesting jurisdiction of matters of probate in the superior court, include the ascertainment and determination of the persons who succeed to the estate of a decedent, either as devisees, or legatees, as well as the amount or portion of the estate to which each one is entitled, and also the construction or effect to be given to the language of a will, but do not include a determination of claims against the heir or devisee for his portion of the estate arising subsequent to the death of the ancestor, whether such claim arises by virtue of his contract or in invitum; nor is the determination of conflicting claims to the estate of an heir or devisee, or whether he has conveyed or assigned his share of the estate, a matter of probate.—*Martinovich v. Marsicano*, 70 P. 459, 137 Cal. 354.

Colo. 1937. Where status of heirship or non-heirship, whether dependent on matters of legal or equitable cognizance, becomes material in probate of will or in any proceedings incident thereto, it is "matter of probate" within constitutional provision giving county court original jurisdiction in all "matters of probate". Const. art. 6, § 23.—In re Stoiber's Estate, 72 P.2d 276, 101 Colo. 192, 112 A.L.R. 1416.—Wills 248.

Wash. 1920. The words "matters of probate" in Const. art. 4, § 6, conferring upon superior court original jurisdiction of matters of probate, were used as inclusive of the subject of adoption.—In re Dingman, 188 P. 755, 110 Wash. 513.—Adop 10.

MATTERS OF PROCEDURE

S.D.N.Y. 1990. Motion for relief from judgment was unavailable in contesting arbitrators' decision; motion to vacate award fell within scope of "matters of procedure" within meaning of rule extending rules of civil procedure to arbitration proceedings only to extent that matters of procedure were not provided for in Federal Arbitration Act. 9 U.S.C.A. §§ 1 et seq., 9, 10; Fed.Rules Civ.Proc. Rules 1, 60(b), 81(a)(3), 28 U.S.C.A.—*Cook Chocolate Co., a Div. of World's Finest Chocolate, Inc. v. Salomon Inc.*, 748 F.Supp. 122, affirmed 932 F.2d 955.—Exchanges 11(11.1).

MATTERS OF PUBLIC CONCERN

C.A.D.C. 1995. To qualify for its protection, government employee speech must involve "matters of public concern." U.S.C.A. Const.Amend. 1.—*Sanjour v. E.P.A.*, 56 F.3d 85, 312 U.S.App.D.C. 121, on remand 7 F.Supp.2d 14.—Const Law 90.1(7.2).

C.A.7 (Ill.) 1993. Speech of former employee of public colleges organization speech did not address "matters of public concern" so as to support her § 1983 action against community college district board of trustees and employee's superiors for retaliation for her exercise of free speech; employee's speech related predominantly to her personal inter-

est in resolving friction between herself and superior, rather than her concern as citizen over sexist behavior of organization official. 42 U.S.C.A. § 1983; U.S.C.A. Const.Amend. 1.—*Hartman v. Board of Trustees of Community College Dist. No. 508, Cook County, Ill.*, 4 F.3d 465, rehearing denied.—Civil R 157.

C.A.7 (Ill.) 1993. For purposes of determining whether public employee is protected from adverse employment action on basis of his speech, "matters of public concern" may be raised in midst of personal dispute. 42 U.S.C.A. § 1983; U.S.C.A. Const.Amend. 1.—*Hartman v. Board of Trustees of Community College Dist. No. 508, Cook County, Ill.*, 4 F.3d 465, rehearing denied.—Const Law 90.1(7.2).

C.A.7 (Ill.) 1993. For purposes of determining whether public employee is protected from adverse employment action on basis of his speech, "matters of public concern" may be expressed in private setting. 42 U.S.C.A. § 1983; U.S.C.A. Const.Amend. 1.—*Hartman v. Board of Trustees of Community College Dist. No. 508, Cook County, Ill.*, 4 F.3d 465, rehearing denied.—Const Law 90.1(7.2).

C.A.8 (Iowa) 1995. Alleged statements by former probationary faculty member criticizing state university department of architecture's ties to business community were on "matters of public concern" for purposes of First Amendment analysis. U.S.C.A. Const.Amend. 1.—*Mumford v. Godfried*, 52 F.3d 756.—Const Law 90.1(7.3).

C.A.10 (Kan.) 1998. For purposes of public employee's retaliatory discharge claim, "matters of public concern" are those of interest to community, whether for social, political, or other reasons, while matters of only personal interest to government employees are not protected by First Amendment. U.S.C.A. Const.Amend. 1.—*Lytle v. City of Haysville, Kan.*, 138 F.3d 857.—Const Law 90.1(7.2).

C.A.10 (Okla.) 1998. Teacher's statements quoted in newspaper concerning his suspension as high school head football coach did not involve "matters of public concern" for First Amendment purposes; statements were self-serving, not intended to disclose evidence of wrongdoing, inefficiency, or malfeasance on part of school district or its officials, and related instead to internal personnel dispute. U.S.C.A. Const.Amend. 1.—*Lancaster v. Independent School Dist. No. 5*, 149 F.3d 1228.—Const Law 90.1(7.3); Schools 147.12.

C.A.5 (Tex.) 2001. "Matters of public concern" are those which can be fairly considered as relating to any matter of political, social, or other concern to the community, for purposes of resolving a public employee's First Amendment retaliation claim. U.S.C.A. Const.Amend. 1.—*Branton v. City of Dallas*, 272 F.3d 730, rehearing en banc denied 31 Fed.Appx. 157.—Const Law 90.1(7.2).

C.A.10 (Utah) 2000. "Matters of public concern," for purposes of determining whether public employee has engaged in protected speech, are those of interest to the community, whether for social, political, or other reasons, and in analyzing

whether speech constitutes a matter of public concern, court may focus on the motive of the speaker and whether the speech is calculated to disclose misconduct or merely deals with personal disputes and grievances unrelated to the public's interest; when the identified speech focuses on disclosing a public official's malfeasance or wrongdoing, it is most likely a matter of public concern, while it is generally not considered protected speech if its aim is simply to air grievances of a purely personal nature. U.S.C.A. Const.Amend. 1.—*Lighton v. University of Utah*, 209 F.3d 1213.—Const Law 90.1(7.2).

M.D.Ala. 1997. For purpose of determining whether speech by tenured university professor enjoyed First Amendment protection, educational standards of university and its School of Music constituted "matters of public concern." U.S.C.A. Const.Amend. 1.—*Anderson-Free v. Steptoe*, 970 F.Supp. 945.—Const Law 90.1(7.3).

D.Colo. 1999. Public employee's speech regarding qualifications of a highly visible public official, which impact the political or social life of a community, are "matters of public concern," protected by First Amendment. U.S.C.A. Const.Amend. 1.—*Jandro v. Foster*, 53 F.Supp.2d 1088.—Const Law 90.1(7.2).

D.Colo. 1998. Statements made during the course of an employee's official duties weigh against a conclusion that they are "matters of public concern" under the First Amendment. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2).

D.Colo. 1998. Former county employee's letter to head of county engineering department, which was written in the course of employee's official duties, concerned matters of personal interest to employee and disputes about internal purchasing policies, not "matters of public concern," under First Amendment; letter showed that employee disagreed with county's decision to purchase a particular brand of grader and found many faults with that piece of equipment following its purchase and assignment to employee. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2); Counties 67.

D.Colo. 1998. Former county employee's written communications to board of county commissions and to individual commissioners, which described alleged financial waste, unsafe conditions and general mismanagement on a highway project, and which prompted an investigation into the project, related to "matters of public concern," under First Amendment, despite the fact that the communications includes some personal complaints by employee. U.S.C.A. Const.Amend. 1.—*Lee v. Board of County Com'rs of Arapahoe County, Colo.*, 18 F.Supp.2d 1143, affirmed 197 F.3d 1291.—Const Law 90.1(7.2); Counties 67.

D.Colo. 1991. Speech on "matters of public concern," for which adverse employment decision may not be taken against public employee, consists

of speech fairly considered as relating to any matter of political, social, or other concern to community, and is distinguished from speech upon matters only of personal interest. U.S.C.A. Const.Amend. 1.—*Williams v. Castlewood Fire Protection Dist.*, 755 F.Supp. 956.—Const Law 90.1(7.2).

D.Conn. 1998. For purposes of former police officer's § 1983 action alleging that fellow officers investigated him and commenced disciplinary action against him in retaliation for his union activities, such union activities were "matters of public concern" subject to First Amendment protection; when former officer was a union president, he initiated a no confidence vote in one of the defendant officers and participated in collective bargaining procedures. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.—*Mihalick v. Cavanaugh*, 26 F.Supp.2d 391, reconsideration denied 37 F.Supp.2d 125.—Const Law 82(11); Mun Corp 180(1).

D.Conn. 1998. A public employee's speech relates to "matters of public concern" protected by the First Amendment if it relates to any political, social, or other concern of the community. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.—*Mihalick v. Cavanaugh*, 26 F.Supp.2d 391, reconsideration denied 37 F.Supp.2d 125.—Const Law 90.1(7.2).

D.D.C. 1998. "Matters of public concern," subject to First Amendment protection when addressed by government employee, are those of interest to the community, whether for social, political, or other reasons. U.S.C.A. Const.Amend. 1.—*Fraternal Order of Police, D.C. v. Rubin*, 26 F.Supp.2d 133.—Const Law 90.1(7.2).

S.D.Ind. 1998. Deputy prosecutor's statements to newspaper about her complaints of sex discrimination in elected prosecutor's office involved "matters of public concern" at the core of First Amendment under *Connick/Pickering* doctrine. U.S.C.A. Const.Amend. 1.—*Bibbs v. Newman*, 997 F.Supp. 1174.—Const Law 90.1(7.2); Dist & Pros Attys 3(1).

D.Kan. 2002. "Matters of public concern," for purposes of public employee's First Amendment retaliation claim, are those which can be fairly considered as relating to any matter of political, social, or other concern to the community. U.S.C.A. Const.Amend. 1.—*Getz v. Board of County Com'rs of the County of Shawnee, Kan.*, 194 F.Supp.2d 1154.—Const Law 90.1(7.2).

D.Kan. 2002. "Matters of public concern," for purposes of public employee's First Amendment retaliation claim, are those which can be fairly considered as relating to any matter of political, social, or other concern to community. U.S.C.A. Const.Amend. 1.—*Beach v. City of Olathe, Kan.*, 185 F.Supp.2d 1229.—Const Law 90.1(7.2), 91.

D.Me. 1999. "Matters of public concern," for purposes of government employee's First Amendment claim, are those which can be fairly considered as relating to any matter of political, social, or other concern to the community; whether an employee's speech meets this standard is a question of

law to be decided by the court on the basis of the content, form, and context of the statements. U.S.C.A. Const.Amend. 1.—*Parks v. City of Brewer*, 56 F.Supp.2d 89.—Const Law 45, 90.1(7.2).

D.Me. 1999. In order for employee's speech to be constitutionally protected, it must relate to matter of public concern and plaintiff's interest in her expression must outweigh defendant's interest in promoting efficient service by its employees; "matters of public concern" are those which can be fairly considered as relating to any matter of political, social, or other concern to community.—*Green v. Maine School Administrative Dist. No. 77*, 52 F.Supp.2d 98.—Mast & S 30(6.35).

S.D.Ohio 2000. "Matters of public concern," for purposes of public employee's First Amendment free speech claim, include misuse of public money, unethical or illegal practices in an office, or corruption. U.S.C.A. Const.Amend. 1.—*Gratsch v. Hamilton County Sheriff's Dept.*, 91 F.Supp.2d 1160, affirmed in part, reversed in part 12 Fed.Appx. 193.—Const Law 90.1(7.2).

Colo. 1990. Black female employee of state university showed, by preponderance of evidence, that her letter to United States Senator touched on "matters of public concern," and therefore fell within First Amendment's protection, where letter complained of irregularities in university's grievance hearing on racial discrimination charges, alerted Senator to possibility that no action would be taken regardless of outcome of hearing, and requested that United States Attorney's Office investigate possible civil rights violations; fact that letter arose in context in which employee had personal stake did not show that it did not touch on "matters of public concern." U.S.C.A. Const.Amend. 1.—*Kemp v. State Bd. of Agriculture*, 803 P.2d 498, certiorari denied 111 S.Ct. 2798, 501 U.S. 1205, 115 L.Ed.2d 972.—Colleges 8.1(1).

Colo.App. 1998. Professor's allegations of malfeasance and impropriety concerning use of public funds at public university touched on "matters of public concern" for First Amendment purposes; professor raised general issues of mismanagement and misappropriation of funds by university's dean and asserted that certain budgeted funds were unaccounted for, and subsequent investigation identified discrepancy between money authorized for dean to distribute and actual amounts distributed. U.S.C.A. Const.Amend. 1.—*Cotter v. Board of Trustees of University of Northern Colorado*, 971 P.2d 687.—Colleges 8.1(1); Const Law 90.1(7.3).

Colo.App. 1998. Professor's allegations of mismanagement of university computer center touched on "matters of public concern" for First Amendment purposes; professor claimed improprieties which financially impacted university, including allegations that members of computer center had usurped computer memory for their private entertainment and had unnecessarily expended public funds for additional memory, rather than properly managing use of available memory. U.S.C.A. Const.Amend. 1.—*Cotter v. Board of Trustees of*

University of Northern Colorado, 971 P.2d 687.—Colleges 8.1(1); Const Law 90.1(7.3).

D.C. 1996. Speech on "matters of public concern" is not speech that might be of popular interest because it captures attention of public based on its sensational or human interest aspects, but is instead speech of constitutional interest because it relates to ordering of government and society at large. U.S.C.A. Const.Amend. 1.—*Ayala v. Washington*, 679 A.2d 1057.—Libel 48(1).

D.C. 1996. Speech which concerns conduct of government or important issues of self-governance is properly treated as "matters of public concern," and speakers are protected by First Amendment from inhibition that they inadvertently may run afoul of defamation laws. U.S.C.A. Const.Amend. 1.—*Ayala v. Washington*, 679 A.2d 1057.—Libel 48(1).

N.D. 1907. The term "matters of public concern," within Rev.Code 1905, § 6751, declaring that the Supreme Court shall exercise its original jurisdiction only in cases of strictly public concern, as involves questions affecting the sovereign rights of the state or its franchises or privileges, is not a matter capable of an exact definition, but each case must be governed by its own facts. A question involving the construction of a law to determine whether the Governor shall appoint or the people elect a judicial officer involves the question whether a law of a public nature, and necessarily affecting the state at large, is properly construed as contemplating immediate action by the Governor in making an appointment or a delay in filling an office until an election is had and the Supreme Court has jurisdiction on a private relator's appeal to it.—*State ex rel. Erickson v. Burr*, 113 N.W. 705, 16 N.D. 581.

Tex.App.—El Paso 1997. Former county employee's reports to county judge, local municipal judge, two county commissioners, his immediate supervisor and uniformed officer of Department of Safety concerning county safety violations, misuse of county equipment and personnel, and missing county property were "matters of public concern" for purposes of employee's § 1983 free speech violation arising out of his termination after making such reports. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.—*Upton County, Tex. v. Brown*, 960 S.W.2d 808, rehearing overruled.—Const Law 90.1(7.2); Counties 67.

MATTERS OF PUBLIC INTEREST

C.A.2 (N.Y.) 1968. Article relating to murder-suicide was within category of "matters of public interest" within rule that in absence of showing of falsity or reckless disregard of truth publication of matters of public interest was protected by First Amendment guarantees of freedom of speech and press. U.S.C.A. Const. Amend. 1.—*Varnish v. Best Medium Pub. Co.*, 405 F.2d 608, certiorari denied 89 S.Ct. 1465, 394 U.S. 987, 22 L.Ed.2d 762, rehearing denied 89 S.Ct. 1769, 395 U.S. 930, 23 L.Ed.2d 251.—Torts 8.5(7).

N.Y. 1973. Facts surrounding inspection of buses which were involved in accidents that resulted in injuries to children involved “matters of public interest” for purposes of rule that statements involving matters of public interest are constitutionally privileged unless made with actual malice.—*Trails West, Inc. v. Wolff*, 344 N.Y.S.2d 863, 32 N.Y.2d 207, 298 N.E.2d 52.—Const Law 90.1(5).

MATTERS OF PUBLIC OR GENERAL CONCERN

Ark. 1973. Communications relating to assistant dean’s qualifications as scholar and professor of law at university law school involved “matters of public or general concern” to which First Amendment constitutional protection of freedom of press extended. U.S.C.A.Const. Amend. 1.—*Gallman v. Carnes*, 497 S.W.2d 47, 254 Ark. 987.—Const Law 90.1(5).

MATTERS OF PUBLIC RECORD

D.Del. 2000. “Matters of public record,” which may be considered by the court in ruling on a motion to dismiss for failure to state a claim, include documents that are required by law to be filed with the Securities and Exchange Commission (SEC). Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—*In re Fruehauf Trailer Corp.*, 250 B.R. 168.—Fed Civ Proc 1832.

MATTERS OF PUBLIC SIGNIFICANCE

C.D.Cal. 2001. Statements made in Internet chat room regarding publicly traded company with many thousands of investors involved “matters of public significance,” and thus were exercises of free speech protected by California strategic lawsuit against public participation (SLAPP) law; company’s successes or failures affected not only individual investors, but in case of large companies, potentially market sectors or markets as a whole. West’s Ann.Cal.C.C.P. § 425.16.—*Global Telemedia Intern., Inc. v. Doe 1*, 132 F.Supp.2d 1261.—Plead 358; Torts 14.

MATTERS OF PURELY LOCAL LAW

C.A.9 (Guam) 1980. “Matters of purely local law” should be limited to construction of local legislation or to court rulings upon questions dealing with local needs and customs.—*People of Territory of Guam v. Dela Rosa*, 644 F.2d 1257.—Fed Cts 781.

MATTERS OF SUBSTANCE

Iowa 1924. Under Code, § 5289, par. 9, as added by Acts 33d Gen.Assem. c. 227, providing that objections to the indictment relating to “matters of substance” shall be deemed waived if not raised before the jury is sworn, objection to an indictment of a banker for receiving deposits while insolvent, in violation of Code, §§ 1884, 1885, as failing to charge knowledge of insolvency, cannot be first raised by objections to testimony, motions for directed verdict, or in arrest of judgment and for new trial, notwithstanding section 5426, authorizing a motion in arrest on any ground of demurrer, or

when no legal judgment can be pronounced on the whole record; “substance” referring to material allegations.—*State v. Gregory*, 198 N.W. 58, 198 Iowa 316.—Ind & Inf 196(5).

Md. 1979. “Matters of substance,” within meaning of rule requiring a defendant’s consent prior to substantive amendment of charging instrument, encompasses the characterization of the crime and a description of the particular acts alleged to have been committed by the defendant, with all else being merely “form.” Maryland Rules, Rule 713.—*Brown v. State*, 400 A.2d 1133, 285 Md. 105.—Ind & Inf 159(2), 161(5).

MATTERS OR THINGS WHATSOEVER

Cal.App.1 Dist. 1941. In agreement by stockholders to sell all stock of the corporation, providing that stockholders would pay or cause to be paid all money due on account of any “matters or things whatsoever” relating to certain properties of the corporation, the quoted phrase was broad enough to cover federal income taxes on income partially derived from operation of such properties.—*Berylwood Inv. Co. v. Graham*, 111 P.2d 467, 43 Cal. App.2d 659.—Int Rev 4823.

MATTERS OUTSIDE PLEADING

N.J.Super.A.D. 1962. “Matters outside pleading,” within rule that motion to dismiss pleading for failure to state claim shall be treated as motion for summary judgment where matters outside pleading are presented, must be presented by depositions, admissions or affidavits, and cannot be raised, without verification, in oral arguments of counsel or in briefs filed with court. R.R. 4:12–2.—*P. & J. Auto Body v. Miller*, 178 A.2d 237, 72 N.J.Super. 207.—Judgm 185.2(2).

MATTERS OUTSIDE THE PLEADING

C.A.8 (Mo.) 1992. In determining whether motion to dismiss for failure to state a valid cause of action should be treated as a motion for summary judgment in light of presentment of “matters outside the pleading,” “matters outside the pleading” included written or oral evidence in support of or in opposition to the pleading that provided some substantiation for, and did not merely reiterate, what was said in the pleadings. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—*Gibb v. Scott*, 958 F.2d 814, appeal after remand 29 F.3d 411.—Fed Civ Proc 2533.1.

Mass. 1983. Category of “matters outside the pleading,” the consideration of which requires conversion of motion to dismiss to motion for summary judgment, is broad, but even when construed broadly, such matters must provide some relevant, factual information to the court. Rules Civ.Proc., Rules 12(b), (b)(6), 43A M.G.L.A.; 56, 43B M.G.L.A.—*Stop & Shop Companies, Inc. v. Fisher*, 444 N.E.2d 368, 387 Mass. 889.—Judgm 183.

MATTERS OUTSIDE THE PLEADINGS

C.A.8 (Minn.) 1999. “Matters outside the pleadings,” consideration of which in ruling on

motion to dismiss for failure to state a claim will require conversion of motion to one for summary judgment, include any written or oral evidence in support of or in opposition to the pleading that provides some substantiation for and does not merely reiterate what is said in the pleadings. Fed. Rules Civ.Proc. Rules 12(b)(6), 56, 28 U.S.C.A.—Hamm v. Rhone-Poulenc Rorer Pharmaceuticals, Inc., 187 F.3d 941, certiorari denied 120 S.Ct. 937, 528 U.S. 1117, 145 L.Ed.2d 815.—Fed Civ Proc 1832, 2533.1.

C.A.8 (Minn.) 1999. Statements of counsel at oral argument on motion to dismiss for failure to state a claim which raise new facts not alleged in the pleadings constitute “matters outside the pleadings,” which if considered by court require treatment of motion as one for summary judgment. Fed. Rules Civ.Proc. Rules 12(b)(6), 56, 28 U.S.C.A.—Hamm v. Rhone-Poulenc Rorer Pharmaceuticals, Inc., 187 F.3d 941, certiorari denied 120 S.Ct. 937, 528 U.S. 1117, 145 L.Ed.2d 815.—Fed Civ Proc 1832, 2533.1.

D.Colo. 1975. Administrative record compiled by Interior Board of Land Appeals constituted “matters outside the pleadings” so that, when the record was considered by the court on motion for judgment on the pleadings, the motion would be treated as a motion for summary judgment. Fed. Rules Civ.Proc., rule 12(c), 28 U.S.C.A.—Roberts v. Morton, 389 F.Supp. 87, affirmed 549 F.2d 158, certiorari denied 98 S.Ct. 121, 434 U.S. 834, 54 L.Ed.2d 95.—Fed Civ Proc 2533.1.

W.D.Tenn. 2000. Exhibits attached to plaintiff's response to motion to dismiss for failure to state claim upon which relief could be granted did not qualify as “matters outside the pleadings,” for purposes of rule requiring court to convert motion to dismiss to one for summary judgment if considering matters outside the pleadings, given that documents merely repeated allegations made in complaint. Fed. Rules Civ.Proc. Rule 12(b), 28 U.S.C.A.—Sparks v. Allstate Ins. Co., 98 F.Supp.2d 933.—Fed Civ Proc 1832.

Idaho 1984. In view of affidavits and depositions submitted in connection with motion to dismiss, constituting “matters outside the pleadings,” trial court correctly treated motion to dismiss as one for summary judgment. Rules Civ.Proc., Rule 12(b).—Masi v. Seale, 682 P.2d 102, 106 Idaho 561.—Judgm 183.

Ind.App. 1998. “Matters outside the pleadings,” as anticipated under rule that where matters outside the pleadings are presented to and not excluded by the trial court, a motion for judgment on the pleadings shall be treated as one for summary judgment, are those materials that would be admissible for summary judgment purposes, such as: depositions, answers to interrogatories, admissions, and affidavits. Trial Procedure Rule 12(C).—Richards-Wilcox, Inc. v. Cummins, 700 N.E.2d 496.—Judgm 183.

Me. 1966. Facts stated in plaintiff's trial briefs, otherwise unsupported, were not “matters outside the pleadings” within rule authorizing trial court,

on motion for judgment on pleadings, where matters outside pleadings are represented to and not excluded by court, to treat and dispose of motion as one for summary judgment. Rules of Civil Procedure, rules 12(b), 56.—Westman v. Armitage, 215 A.2d 919.—Judgm 183.

N.C.App. 1991. For purposes of determining whether motion to dismiss for failure to state claim upon which relief can be granted should be converted to motion for summary judgment, complaints filed in prior actions are “matters outside the pleadings.” Rules Civ.Proc., Rules 12(b)(6), 56, G.S. § 1A-1.—North Carolina R. Co. v. Ferguson Builders Supply, Inc., 407 S.E.2d 296, 103 N.C.App. 768.—Judgm 183.

N.C.App. 1989. Motion to make more definite and certain and to delay hearing on motion to dismiss for failure to state claim, supplemental motion to dismiss for failure to state claim, and response to motion to make more definite and certain were not “matters outside the pleadings,” within meaning of rule converting motion to dismiss for failure to state claim to motion for summary judgment when matters outside the pleadings are presented to and not excluded by the court. Rules Civ.Proc., Rules 12(b), (b)(6), 56, G.S. § 1A-1.—King v. Cape Fear Memorial Hosp., Inc., 385 S.E.2d 812, 96 N.C.App. 338, review denied 389 S.E.2d 114, 326 N.C. 265.—Judgm 183.

MATTERS PENDING

N.D.W.Va. 1932. Counsel's mere announcement that defendants intended to appeal held not to constitute “matter pending,” within rule continuing “matters pending” at close of term to next term. District Court for Northern District of West Virginia Rule 14.—Brady v. Baltimore & O.R. Co., 56 F.2d 231.—Fed Civ Proc 25.

MATTERS PERTAINING TO PROBATE BUSINESS

Mo. 1974. Rulings on the merits of claims presented against an estate, and the classifications of such claims, if allowed, are unquestionably “matters pertaining to probate business” as that phrase is used in the Constitution. V.A.M.S.Const. art. 5, § 16.—State ex rel. Skeer v. Borron, 514 S.W.2d 541.—Ex & Ad 250.

MATTERS PRESENTED

C.A.D.C. 1952. Certain limited types of assertions contained in memoranda of points and authorities, those which are patently not subject to challenge or contradiction and which relate to assurances of future conduct, may constitute “matters presented” within rule of procedure which authorizes trial court, when confronted with motion to dismiss for failure to state claim, to treat it as motion for summary judgment, if matters outside the pleading are presented to and not excluded by court. Fed. Rules Civ.Proc. rule 12(b), 28 U.S.C.A.—Sardo v. McGrath, 196 F.2d 20, 90 U.S.App.D.C. 195.—Fed Civ Proc 2535.

MATTERS PROPERLY CONNECTED THEREWITH

Ind. 1923. Act requiring payment of license fees and number plates on motor vehicles held not unconstitutional as covering more than one subject; “matters properly connected therewith.”—*Baldwin v. State*, 141 N.E. 343, 194 Ind. 303.—Statut 107(1).

Or. 1951. The words “matters properly connected therewith” within constitutional provision that every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in title, include every matter germane to, and having a natural connection with, general subject of Act. Const. art. 4, § 20.—*In re Trader’s Guardianship*, 229 P.2d 276, 191 Or. 203.—Statut 107(1), 109.8.

Or. 1942. The word “subject”, as used in constitutional provision that every act shall embrace but one subject and matters properly connected therewith, includes the chief thing to which the subject relates, and the “matters properly connected therewith” are matters germane to and having a natural connection with the general subject of the act. Const. art. 4, § 20.—*Nickerson v. Mecklem*, 126 P.2d 1095, 169 Or. 270.—Statut 105(1).

Or. 1936. The “subject” of the law is the matter to which the measure relates and with which it deals. The term “subject” is to be given a broad and extensive meaning so as to allow the Legislature full scope to include in one act all matters having a logical or natural connection. The subject may be as comprehensive as the Legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several, for the Constitution does not contain any limitation on the comprehensiveness of the subject. The word “subject” includes the chief thing to which the statute relates, and the words “matters properly connected therewith” include every matter germane to and having a natural connection with the general subject of the act. If all the provisions of the law relate directly or indirectly to the same subject, are naturally connected, and are not foreign to the subject expressed in the title, they will not be held unconstitutional.—*State v. Allen*, 53 P.2d 1054, 152 Or. 422.

MATTERS RELATING TO * * * BASTARDY

Ark. 1976. Action filed by putative father, acknowledging that he was father of child, seeking to obtain visitation rights, and seeking court order relating to his child support obligation, was an action involving only “matters relating to * * * bastardy” under provision of State Constitution giving county courts “exclusive original jurisdiction in all matters relating to * * * bastardy,” and thus chancery court was without jurisdiction to hear case, even if reason for placing jurisdiction of bastardy matters in county court no longer existed. Const. art. 7, § 28.—*Rapp v. Kizer*, 543 S.W.2d 458, 260 Ark. 656.—Courts 472.3.

MATTERS RELATING TO CONDUCT OF CONVICT

Md. 1926. In expression “matters relating to conduct of convict” as to which court has jurisdiction on suspension of sentence “conduct” means personal behavior or deportment and does not include payment of monthly fine or penalty.—*Kelly v. State*, 133 A. 899, 151 Md. 87.

MATTERS RELATING TO SUCH APPLICATION FOR INSURANCE

C.C.A.9 (Or.) 1939. Where insured failed to give names of several physicians he had consulted within five-year period preceding making of application for life policy, but had disclosed physicians’ names to insurer’s soliciting agent when writing of policy was first proposed, insured’s disclosures of medical history to agent constituted “matters relating to such application for insurance” within Oregon statute making soliciting agent, insurer’s agent in all matters relating to application for insurance. ORS 739.520.—*Northwestern Mut. Life Ins. Co. v. Cohn Bros.*, 102 F.2d 74.—Insurance 1634(3).

MATTERS RELATING TO THE AFFAIRS OF A DECEDENT

N.Y.Sur. 1941. Where affairs of testator’s estate were wholly closed and executors completely discharged from further accountability by all interested parties’ written agreement, giving remaindermen after death of testator’s widow, for whose benefit estate was devised in trust, certain rights in lieu of their previous rights against property of estate or in personam as to executors, any further action by such parties individually or in respect to such property did not constitute “matters relating to the affairs of a decedent,” so that their obligations and others’ corresponding rights are measured only by terms of such agreement, stipulations of which are enforceable only in Supreme Court, not Surrogate’s Court.—*In re Baruch’s Estate*, 27 N.Y.S.2d 285, 176 Misc. 344.—Courts 472.1.

MATTERS RELATING TO THE POLICY ISSUED

Or.App. 1990. Insurance salesman’s contacts with insured and subsequent written coverage representation to insured involved “matters relating to the policy issued,” and thus statute required that salesman be regarded as agent of fire insurer rather than agent of insured, considering salesman’s knowledge that building was not occupied, and insurer’s previous concern regarding occupancy of building under provision of policy stating that insurer was not liable for loss if building was vacated or unoccupied beyond period of 60 consecutive days. ORS 744.165(1).—*Kabban v. Mackin*, 801 P.2d 883, 104 Or.App. 422.—Insurance 1628.

MATTER STATED

Tex.Civ.App.—Waco 1962. Statute providing that any written report made by officer of governmental subdivision in performance of his office shall, so far as relevant, be admitted as evidence of matters stated therein, limits “matter stated” only to statements prescribed by statute making this a

function of the office. *Vernon's Ann.Civ.St. arts. 3731a, § 1, 4477, rule 41a.—Armstrong v. Employers Cas. Co., 357 S.W.2d 168.—Evid 383(4).*

MATTER SUBJECT TO ARBITRATION

C.A.3 (N.J.) 1960. Any dispute between employer and union requiring interpretation and application of collective bargaining agreement was a "matter subject to arbitration" under agreement.—*International Tel. & Tel. Corp. v. Local 400, Professional, Technical and Salaried Division, Intern. Union of Elec., Radio and Mach. Workers, AFL-CIO, 286 F.2d 329.—Labor 434.2.*

MATTER SUBMITTED TO A COURT

N.D. 1983. The county court was not limited to entry of an "order" allowing the claim, but was authorized to enter a "judgment" since the petition for allowance of the claim against the estate was a "matter submitted to a court" and the county court, by allowing or disallowing the claim, was making a judicial determination which "fixes the rights and duties of the parties." NDCC 27-07.1-17, 30.1-01-01 et seq., 30.1-19-06, subd. 1.—*Matter of Estate of Raketti, 340 N.W.2d 894.—Courts 202(4).*

MATTERS UNINSURABLE

Ill.App. 1 Dist. 2000. Repayment by health and welfare fund of monies that had been illegally transferred from union pension fund, pursuant to settlement agreement between funds, was among "matters uninsurable" that were excluded from definition of "ultimate net loss" payable under health and welfare fund's fiduciary liability policy.—*Local 705 Intern. Broth. of Teamsters Health & Welfare Fund v. Five Star Managers, L.L.C., 249 Ill.Dec. 75, 735 N.E.2d 679, 316 Ill.App.3d 391.—Insurance 2385.*

MATTERS WHICH INHERE IN THE VERDICT

Fla.App. 2 Dist. 1987. Verdict is not generally subject to attack if based upon "matters which inhere in the verdict," which are those arising during deliberation process.—*Sconyers v. State, 513 So.2d 1113.—Crim Law 957(1).*

MATTERS WHICH OCCURRED DURING THE LIFETIME OF THE DECEDENT

Ind.App. 1936. In widow's action to compel executor of her husband's estate to remove from supplemental inventory articles of personalty allegedly belonging to widow, widow's testimony that she owned certain articles listed in inventory and that inventory listed property that did not belong to husband's estate held competent, since evidence did not concern "matters which occurred during the lifetime of the decedent." *Burns' Ann.St. §§ 2-1713, 2-1715.—Lang v. Snapp, 4 N.E.2d 587, 103 Ind.App. 627.—Witn 168.*

MATTERS WITHIN JURISDICTION OF DEPARTMENT OR AGENCY OF THE UNITED STATES

E.D.N.Y. 1956. Under statute penalizing false statements in any "matter within the jurisdiction of

any department or agency of the United States", where, pursuant to government regulations, contractor producing classified weapons for Navy was required to submit to Navy Department "Defense Personnel Security Questionnaires" completed by its employees, such questionnaires were "matters within jurisdiction of department or agency of the United States", and an employee of such contractor who made false negative response in such questionnaire to inquiry whether he had been convicted of crime had violated statute. 18 U.S.C.A. §§ 795, 797, 1001; Executive Order No. 10104, § 1(f), 18 U.S.C.A. § 795 note.—*U.S. v. Giarraputo, 140 F.Supp. 831.—Fraud 68.10(3).*

MATTER TENDING ONLY TO MITIGATE OR REDUCE DAMAGES

N.Y. 1934. Phrases "mitigating circumstances" and "matter tending only to mitigate or reduce damages" in statutes relating to pleading and proof in actions for libel and slander are synonymous, and mean circumstances bearing on defendant's liability for exemplary damages by reducing moral culpability, or on liability for actual damages by showing partial extinguishment thereof. *Civil Practice Act, §§ 262, 338.—Fleckenstein v. Friedman, 193 N.E. 537, 266 N.Y. 19.—Libel 111.*

MATTER THEN PENDING

Cal.App. 2 Dist. 1923. Where defendant and another detective employed by a county arrested one indicted for grand larceny in Texas and then permitted him to escape on payment of \$10,000 made by their victim's wife, for the purpose of prosecution the matter of their victim's arrest was a "matter then pending," regardless of the actual existence of an indictment against him in Texas.—*People v. Anderson, 216 P. 401, 62 Cal.App. 222.—Brib 1(2).*

MATTER UNDER INVESTIGATION

C.A.9 (Cal.) 1968. For purposes of statute granting National Labor Relations Board the right to issue and have enforced subpoenas requiring persons to produce evidence or give testimony touching matter under investigation, a representation election inherently constitutes a "matter under investigation" from filing of a petition or stipulation therefor, through the handling of all the incidents thereof, and until the termination of the proceedings. *National Labor Relations Act, § 11(2) as amended 29 U.S.C.A. § 161(2); 28 U.S.C.A. § 1337.—British Auto Parts, Inc. v. N.L.R.B., 405 F.2d 1182, certiorari denied Teledyne, Inc. v. N.L.R.B., 89 S.Ct. 1625, 394 U.S. 1012, 23 L.Ed.2d 39.—Labor 522, 523.*

Cal.App. 1 Dist. 1920. The power given the civil service board by Oakland Charter, §§ 81, 82, to determine the "matter under investigation" on appeal by a discharged employee includes the power to determine not only the guilt of employee, but also the punishment he should properly receive, and the board could reinstate the employee with loss only of pay for the time since his discharge.—*Hackett v. Morse, 188 P. 308, 45 Cal.App. 788.—Mun Corp 218(9).*

MATTER UNDER INVESTIGATION OR IN QUESTION

C.A.4 (N.C.) 1967. Personnel and payroll records of corporation or list setting forth names and addresses of all of corporation's employees who were eligible to vote in the representation election were "evidence" of a "matter under investigation or in question" within statute granting National Labor Relations Board the right to examine and copy such evidence. National Labor Relations Act, §§ 7, 8(a) (1), 9 and (c) (1), 29 U.S.C.A. §§ 157, 158(a) (1), 159 and (c) (1).—*N. L. R. B. v. Hanes Hosiery Division-Hanes Corp.*, 384 F.2d 188, certiorari denied 88 S.Ct. 1041, 390 U.S. 950, 19 L.Ed.2d 1141.—Labor 210.1.

MATTER WITHIN JURISDICTION OF DEPARTMENT OR AGENCY OF UNITED STATES

D.Mass. 1942. False bill need not be presented to agency or department of United States to violate statute making it an offense knowingly to make or use false bill in any "matter within jurisdiction of department or agency of United States". 18 U.S.C.A. §§ 287, 1001.—*U.S. v. Ganz*, 48 F.Supp. 323.—Fraud 68.10(3).

MATTER WITHIN THE JURISDICTION

U.S.Cal. 1969. Where National Labor Relations Board received accused's "non-Communist" affidavit pursuant to statute providing that a union could participate in representation proceedings conducted by Board or utilize Board's machinery to protest employer unfair labor practices only if each union officer filed such an affidavit, accused's false statement therein concerned "matter within the jurisdiction" of Board within purview of statute punishing the making of fraudulent statement as to any matter within jurisdiction of department or agency of United States. 18 U.S.C.A. § 1001; Act of June 23, 1947, § 9(h), 61 Stat. 146.—*Bryson v. U.S.*, 90 S.Ct. 355, 396 U.S. 64, 24 L.Ed.2d 264.—Fraud 68.10(3).

C.A.5 (Fla.) 1974. Within meaning of statute proscribing the making of a false statement in any matter within the jurisdiction of any department or agency of the United States, the phrase "matter within the jurisdiction" must be given a broad, nontechnical meaning. 18 U.S.C.A. § 1001.—*U.S. v. Lambert*, 501 F.2d 943.—Fraud 68.10(3).

MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES

W.D.N.Y. 1979. Where corporation had entered into an agreement with the United States and was under a duty to furnish certain reports to the Federal Water Quality Administration, which had been chosen to monitor compliance with the agreement, corporation had duty to supply truthful information in the reports concerning level of mercury discharge into river and since the FWQA had the power to act on information received from the corporation, reports filed pursuant to the agreement were a "matter within the jurisdiction of an agency of the United States", for purposes of the section relating to false statements made in a "mat-

ter within the jurisdiction of any department or agency of the United States." 18 U.S.C.A. § 1001.—*U.S. v. Olin Corp.*, 465 F.Supp. 1120.—Fraud 68.10(3).

MATTER IN ISSUE

N.H. 1950. A "matter in issue" as related to estoppel by judgment is that matter upon which plaintiff proceeds by his action, and which defendant controverts by his pleadings, and means an essential element of a cause of action or a defense recognized by the law.—*Laconia Nat. Bank v. Lavalley*, 77 A.2d 107, 96 N.H. 353.

MATURATION

Minn.App. 1998. "Maturation" of claim for underinsured motorist (UIM) benefits should not be equated with its "accrual" for limitations purposes. M.S.A. § 541.05, subd. 1(1).—*Catnach v. State Farm Ins. Co.*, 577 N.W.2d 251, review denied.—Lim of Act 46(1).

MATURE

C.A.4 (W.Va.) 1975. As used in provision of Organic Act authorizing secretary of agriculture to designate for sale the dead, matured or large growth of trees found upon national forests, the phrase "large growth of trees" requires that each individual tree be identified as "large," and does not merely signify a sizeable stand or grouping of trees, and the word "mature" means physiological maturity rather than economic or management maturity. 16 U.S.C.A. § 476.—*West Virginia Division of Izaak Walton League of America v. Butz*, 522 F.2d 945.—Woods 7.

E.D.Pa. 1998. "Mature" claim under New York's Debtor and Creditor Law is one that is unconditionally due, such as a judgment, whereas an "unmature" claim is one which is unliquidated or contingent. N.Y.McKinney's Debtor and Creditor Law §§ 270, 278, 279.—*Muhl v. Tiber Holding Corp.*, 18 F.Supp.2d 514.—Fraud Conv 217.

Ala. 1965. A debt is "mature" within the mechanics' lien statute requiring suit to be commenced within six months after maturity of entire indebtedness when debt accrues so as to be due and payable. Code 1940, Tit. 33, § 42.—*Howell v. Hallett Mfg. Co.*, 178 So.2d 94, 278 Ala. 316.—Mech Liens 260(3).

Ala. 1963. A debt is "mature," within statute requiring that suit for enforcement in mechanics' lien be commenced within six months after maturity of indebtedness, when it accrues so as to be due and payable. Code 1940, Tit. 33, § 42.—*Home Federal Sav. & Loan Ass'n v. Williams*, 158 So.2d 678, 276 Ala. 37.—Mech Liens 260(3).

Iowa 1986. Counterclaim is "mature," for purpose of rule of civil procedure requiring party to assert mature counterclaims, only where it is presently enforceable. Rules Civ.Proc., Rule 29.—*Telegraph Herald, Inc. v. McDowell*, 397 N.W.2d 518.—Set-Off 36.

N.Y.Sup. 1942. Where owner of senior participation in mortgage was authorized to collect interest from mortgagor and to retain accrued interest on its participation and to remit balance to owners of junior participation, and on expiration of an extension agreement, mortgagor avoided payment of the debt under the moratorium statute, the mortgage did not "mature" and funds collected as interest on the junior participation were not "principal" payments but were payable to the junior participation as their proportionate share of "interest". Civil Practice Act, §§ 1077-a, 1077-c.—In re 301-327 East 68th St., Borough of Manhattan, 39 N.Y.S.2d 779.—Insurance 1363.

Ohio 1996. Pension benefits are "mature" when plan provides for distribution and payments are currently due and payable to employee.—*Erb v. Erb*, 661 N.E.2d 175, 75 Ohio St.3d 18, reconsideration denied 663 N.E.2d 333, 75 Ohio St.3d 1452, appeal after remand 2000 WL 426544, appeal allowed 735 N.E.2d 456, 90 Ohio St.3d 1417, reversed 747 N.E.2d 230, 91 Ohio St.3d 503, 2001-Ohio-104, reconsideration denied 751 N.E.2d 487, 92 Ohio St.3d 1451.—Pensions 138.

Ohio 1996. Pension benefits are not "mature" when payment is delayed until some future date.—*Erb v. Erb*, 661 N.E.2d 175, 75 Ohio St.3d 18, reconsideration denied 663 N.E.2d 333, 75 Ohio St.3d 1452, appeal after remand 2000 WL 426544, appeal allowed 735 N.E.2d 456, 90 Ohio St.3d 1417, reversed 747 N.E.2d 230, 91 Ohio St.3d 503, 2001-Ohio-104, reconsideration denied 751 N.E.2d 487, 92 Ohio St.3d 1451.—Pensions 138.

Tex.Com.App. 1926. Court may enter judgment on award for default in payment with penalties, and may "mature" further payments, but may not reconsider claim on merits. *Vernon's Ann.Civ.St. Supp.*1918, arts. 5246-44, 5246-45, *Vernon's Ann. Civ.St. art.* 8307, §§ 5, 5a.—*Vestal v. Texas Emp. Ins. Ass'n*, 285 S.W. 1041.—Work Comp 1036.

Wash. 1899. "Due," as used in 2 Ballinger's Ann. Codes & St. § 6229, requiring every claim presented to the administrator to be supported by the affidavit of the claimant that the amount is justly due, was not used in the sense of "mature," but was intended to apply to all claims, whether due, to become due, or contingent.—*Barto v. Stewart*, 59 P. 480, 21 Wash. 605.

W.Va. 1903. The word "due," has the meaning sometimes of merely "owing," whether matured or not. Sometimes it means "mature." We say a note is "due and unpaid." Why do we use both words, except to say that the note is both matured and unpaid? The use of the word "due" alone in an affidavit under Code 1899, c. 125, § 46, which fails to say, in the language of the statute, that a certain sum is due and unpaid, but states that it is due, only, is insufficient. If there is a difference between the words, "unpaid" is the more essential.—*Marstiller v. Ward*, 43 S.E. 178, 52 W.Va. 74.

MATURE AND WELL-INFORMED

Kan.App. 1994. Unemancipated minor may be "mature and well-informed," so as to be excused

from notifying her parents of her intent to have an abortion, even though she is not approaching age of majority, is still supported by her parents, and is still a member of their family. K.S.A. 65-6705(d)(1).—*Petition of Doe*, 866 P.2d 1069, 19 Kan.App.2d 204.—Abort 0.5.

MATURE CROPS

Bkrtcy.W.D.Wis. 1985. "Mature crops" are those crops which are mature prior to the expiration of a lease.—*Matter of Gorden*, 47 B.R. 245.—Land & Ten 139(1).

MATURED

C.A.7 (Ill.) 1950. Amendment to provision of National Service Life Insurance Act limiting class of beneficiaries which made the provision inapplicable to policies maturing on or after August 1, 1946 had no application to policies on insured soldier who died on December 10, 1944, since policies "matured" at time of soldier's death. National Service Life Insurance Act, §§ 1 et seq., 2(g), 38 U.S.C.A. §§ 801 et seq., 802(g).—*Walker v. U.S.*, 180 F.2d 217.—Armed S 58(4).

D.Del. 1940. A proposed counterclaim for damages resulting from issuance of preliminary injunction against assertion of rights under a patent was not "matured," so as to authorize presentation thereof as a supplemental pleading under Rule of Civil Procedure, since the relief sought was dependent upon plaintiff's failure to prevail in the case at bar. Rules of Civil Procedure for District Courts, rules 13(e), 15(d), 28 U.S.C.A. following section 723c.—*Goodyear Tire & Rubber Co. v. Marbon Corporation*, 32 F.Supp. 279.—Fed Civ Proc 784.

N.D.W.Va. 1973. Word "matured," in Organic Act which provides that "for the purpose of preserving the living and growing timber and promoting the younger growth on national forests, the Secretary of Agriculture * * * may cause to be designated * * * so much of the dead, matured, or large growth of trees found upon such national forests * * * and may sell the same * * *" does not mean a condition which makes it desirable to cut a tree. 16 U.S.C.A. §§ 475, 476.—*West Virginia Division of Izaak Walton League of America, Inc. v. Butz*, 367 F.Supp. 422, affirmed 522 F.2d 945.—Woods 8.

Bkrtcy.C.D.Cal. 1989. Chapter 7 debtor's interest in single premium deferred annuity which he purchased prepetition was "matured," within meaning of California exemption, when debtor filed for bankruptcy, notwithstanding that first payment was made postpetition; debtor's right to payments arose on date that annuity was purchased. *West's Ann. Cal.C.C.P.* § 704.100.—*In re Moffat*, 107 B.R. 255, affirmed 119 B.R. 201, affirmed 959 F.2d 740.—Exemp 49.

Bkrtcy.D.N.J. 1997. "Matured" claim is claim which is unconditionally due and owing. Bankr. Code, 11 U.S.C.A. § 101(5).—*Matter of Mattera*, 203 B.R. 565.—Bankr 2825.

Ga.App. 1975. Where lease, which stated that lessee would pay 15% attorney fee if lessor had to collect rent from lessee through an attorney, provided that lease could be accelerated if lessee defaulted and where lessor accelerated rent on lessee's default, lessee's obligation under lease had "matured" within meaning of statute relating to notice of enforcement of provisions relative to payment of attorney fees; thus, notice given to lessee of lessor's intention to enforce attorney fee provision complied with such statute, though notice was given before expiration of ten-year term of lease. Code, § 20-506.—Kasum Communications, Inc. v. CPI North Druid Co., 217 S.E.2d 492, 135 Ga.App. 314.—Land & Ten 202(1).

La.App. 2 Cir. 1963. Although contract between supplier of plumbing materials and plumbing subcontractor became effective prior to amendment of Public Works Act requiring person furnishing supplies to subcontractor to give notice to general contractor of claims against subcontractor or to record claims within 45 days from date of notice of acceptance of work by contracting authority, no claim had "matured" or become vested in favor of supplier at time of amendment before completion of work, and supplier, who failed to give notice to general contractor or record claim within 45 days of acceptance of work, could not recover against general contractor or surety. LSA-R.S. 38:2241, 38:2242, 38:2247.—York Corp. v. Louisiana Plumbing Co., 151 So.2d 520, writ denied 152 So.2d 213, 244 La. 400.—Pub Contr 2; States 101.

Mass. 1938. A claim is "matured" for receivership purposes if it has become absolutely due without contingency, although not necessarily liquidated nor presently payable.—In re L.R. Hollander Co., 16 N.E.2d 35, 301 Mass. 278.—Receivers 147.

Mass. 1938. An agreement to pay taxes when due is broken on failure to pay taxes when due, and claim for taxes is "matured" and provable as of such date for receivership purposes.—In re L.R. Hollander Co., 16 N.E.2d 35, 301 Mass. 278.—Receivers 147.

Mass. 1938. Where lease requiring corporate tenant punctually to pay and discharge all taxes within 60 days after due date thereof provided that taxes not paid by tenant should become a part of the "month's rent next thereafter to become due" or that the landlord could pay such taxes and sue tenant therefor at end of 10 days, a tax not paid by tenant on May 1, 1933, was not a "matured" claim as of June 1, 1933, the date when claims must be filed with tenant's receiver to share in distribution of assets, since landlord had no remedy until expiration of 60 days. M.G.L.A. c. 155 §§ 50-53.—In re L.R. Hollander Co., 16 N.E.2d 35, 301 Mass. 278.—Receivers 147.

Mo.App. W.D. 1982. For purposes of compulsory counterclaim rule, with its requisite that counterclaim be "matured" at time of service of pleading, word "matured" may be construed to mean the same as "accrued," as latter word is applied in limitations problems. V.A.M.R. 55.32(a);

V.A.M.S. § 516.100.—Knight v. M.H. Siegfried Real Estate, Inc., 647 S.W.2d 811.—Set-Off 60.

N.Y.Sup. 1982. For purpose of Equitable Distribution Law, the spouse's interest in a pension plan is "vested" if the right cannot be forfeited by the discharge or voluntary retirement prior to his or her reaching retirement age, while the interest is "matured" if there is an unconditional right to immediate payment of retirement benefits. McKinney's DRL § 236, Part B, subd. 1, pars. c, d.—Hebron v. Hebron, 456 N.Y.S.2d 957, 116 Misc.2d 803.—Divorce 252.3(4).

N.Y.Co.Ct. 1997. Claim is "matured," within meaning of fraudulent transfer provisions of Debtor and Creditor Law (DCL), when it has become absolutely due without contingency, though not necessarily liquidated nor presently payable. McKinney's Debtor and Creditor Law §§ 270-281.—Shelly v. Doe, 660 N.Y.S.2d 937, 173 Misc.2d 200, affirmed as modified 671 N.Y.S.2d 803, 249 A.D.2d 756.—Fraud Conv 217.

Okl.Terr. 1899. The words "due" and "matured," in Sess.Laws 1895, c. 7, § 8, providing that when bonds become "due," and there is no money to pay the same, bonds may be issued and sold, and the proceeds used in the payment of such "matured" bonds, are synonymous; and under the statute bonds may be redeemed where the county has a right to declare them due, and has exercised that privilege.—Territory v. Hopkins, 59 P. 976, 9 Okla. 133, 1899 OK 124.—Counties 187.

Pa. 1940. Where demand note provided for calls by payee for additional collateral and sale of collateral deposited, "upon default of payment at maturity * * * without any previous demand, advertisement or notice" and payee bank's collateral register signed by makers authorized sale of collateral "in event of default of payment," payee bank was not justified in selling the collateral without an unresponded-to prior demand on makers for payment of the demand note or deposit of additional collateral and was liable for conversion where it sold the stock for although the note, being at all times due and payable, had "matured" it was not in "default" because no demand either for payment or for deposit of additional collateral had been made.—Heimpel v. First Nat. Bank & Trust Co. of Bethlehem, 12 A.2d 28, 337 Pa. 425.—Plgs 56(3).

Pa.Super. 1938. Where directors of a solvent building and loan association adopted a resolution declaring that value of a certain stock series had reached \$200 but that the series could not be declared matured because of lack of funds to pay \$200 a share and that the series would be "retired" with an immediate payment of 20% of the cash value, resolution amounted to a declaration that the stock was "matured" and precluded association from subsequently taking judgment against stockholder who accepted a sum from secretary and treasurer representing 20% of the difference between the matured value of his stock and balance due on a loan secured by pledge of the stock.—Henry Heymann Bldg. & Loan Ass'n v. Denney,

196 A. 872, 130 Pa.Super. 167.—B & L Assoc 34(6).

Wash. 2002. A retirement plan is said to have “matured” at the time the participant is eligible to receive the first payment.—*In re Marriage of Wright*, 52 P.3d 512, 147 Wash.2d 184.—Pensions 61.

Wash.App. Div. 1 1993. For purpose of division of property on dissolution of marriage, if deferred earnings may be received immediately, they are “matured.”—*In re Marriage of Hurd*, 848 P.2d 185, 69 Wash.App. 38, reconsideration denied, review denied 863 P.2d 1353, 122 Wash.2d 1020.—Divorce 252.3(1).

MATURED ACCOUNTS

Or. 1914. In a broker’s action for commissions on the sale of corporate stock, a finding that, pursuant to a settlement made on March 4, 1910, when defendant accepted certain cash and notes as payment for the stock, commission in a certain sum “became and was earned and was due and payable on the maturity date of said notes,” and “that all of the notes in these findings referred to * * * have matured,” without stating when the notes matured, entitled plaintiffs to interest on the amount of such commission only from the date of the findings, and not from the date of such settlement; the settlement shown by the finding not being a settlement of “matured accounts,” within L.O.L. § 6028, providing for interest on the settlement of matured accounts from the day the balance is ascertained.—*Hammer v. Campbell Automatic Safety Gas Burner Co.*, 144 P. 396, 74 Or. 126.

MATURED AND PAYABLE

C.A.6 (Ohio) 1989. Bankruptcy statute limiting lessor’s claim under lease rejected by debtors to amount of rent “due” under lease was inherently ambiguous, as “due” could mean either “matured and payable,” or “owing.” Bankr.Code, 11 U.S.C.A. § 502(b)(6)(B).—*In re Vause*, 886 F.2d 794.—Bankr 2834.

MATURED AND RIPENED TIMBER

Ct.Cl. 1950. The statute authorizing the cutting of fully “matured and ripened timber” in the Menominee Indian Reservation, was intended to indicate physiological maturity and not commercial maturity. Act March 28, 1908, 35 Stat. 51.—*Menominee Tribe of Indians v. U.S.*, 91 F.Supp. 917, 117 Ct.Cl. 442.—Indians 17.

MATURED CLAIM

C.A.3 (Pa.) 1970. Claim for contribution is not a “matured claim” within federal rule permitting claims, which have matured after filing of party’s pleading in action, to be pleaded with permission of court because it is contingent upon a verdict and judgment establishing liability. Fed.Rules Civ.Proc. rules 13(a, b, e), 21, 28 U.S.C.A.; 12 P.S.Pa. § 2083.—*Stahl v. Ohio River Co.*, 424 F.2d 52.—Fed Civ Proc 784.

Del.Ch. 1954. Prior to termination of action favorably to defendant, claim for malicious prosecution of such action is not a “matured claim” within meaning of Chancery Court Rule governing compulsory counterclaims. Court of Chancery Rules, rule 13, Del.C.Ann.—*Alexander v. Petty*, 108 A.2d 575, 35 Del.Ch. 5.—Mal Pros 34.

MATURED COUNTERCLAIM

Mo.App. W.D. 1985. “Matured counterclaim,” within sense of compulsory counterclaims rule, is a claim which has accrued to the pleader: that is to say, when the right to sue arises. V.A.M.R. 55.32(a).—*Myers v. Clayco State Bank*, 687 S.W.2d 256.—Set-Off 60.

MATURED DEBT

Bkrtcy.E.D.N.Y. 1992. Whether claim could be described as “matured debt,” within meaning of statute requiring turnover of debt that is property of the estate and that is matured, depends upon whether claim is specific in its terms as to amount due and date payable. Bankr.Code, 11 U.S.C.A. § 542(b).—*In re Kenston Management Co., Inc.*, 137 B.R. 100.—Bankr 2050.

Bkrtcy.S.D.N.Y. 1996. Whether claim for overdue account can be described as “matured debt” depends on whether it is specific in its terms as to amount due and date payable; turnover action may be inappropriate where debtor’s claim lacks such certainty. Bankr.Code, 11 U.S.C.A. § 542(b).—*In re Shea & Gould*, 198 B.R. 861.—Bankr 3063.1.

Md. 2002. A “matured debt” is one in which the sum is certain and is due, i.e. matured.—*Consolidated Const. Services, Inc. v. Simpson*, 813 A.2d 260, 372 Md. 434.—Garn 41.

MATURED DEBTS

E.D.Va. 1991. “Matured debts” for which turnover proceeding may be brought include debts owed for accounts receivable, for judgment already obtained, or for monies previously held in trust or in escrow. Bankr.Code, 11 U.S.C.A. § 542(b).—*In re National Enterprises, Inc.*, 128 B.R. 956.—Bankr 3064.

MATURE DEBT

Bkrtcy.S.D. Ohio 1989. Overdue account receivable constituted “mature debt,” for purposes of provision stating that “mature debts” owed to estate are proper subject of turnover proceeding. Bankr.Code, 11 U.S.C.A. § 542(b); 28 U.S.C.A. § 157(b)(2)(E).—*In re Nuckols and Associates Sec., Inc.*, 109 B.R. 294.—Bankr 3064.

MATURED INDEBTEDNESS

Ill.App.1 Dist. 1969. Bank’s claim against its corporate depositor was not a “matured indebtedness” required to give bank a right of setoff against funds on deposit, where claim arose from third person’s checks cashed by bank upon advice of depositor’s treasurer but unpaid by drawee banks because of “not sufficient funds.”—*Faber, Coe &*

Gregg, Inc. v. First Nat. Bank of Chicago, 246 N.E.2d 96, 107 Ill.App.2d 204.—Banks 134(2).

MATURED LIABILITY

Okla. 1933. Where stock insurer advanced money to mutual life insurer under contract beyond stock insurer's power, mutual insurer's obligation to return money so advanced held "matured liability" for purpose of ascertaining its insolvency in dissolution proceeding. Laws 1923, c. 60, 36 Okl.St. Ann. § 651 et seq.; Laws 1925, c. 32, as amended by Laws 1931, c. 51, art. 3, 36 Okl.St. Ann. § 691 et seq.—In re New State Life Ins. Co., 23 P.2d 376, 164 Okla. 208, 1933 OK 361.—Insurance 1370.

MATURED OR UNCONDITIONAL

N.D.Tex. 1989. Approval by Department of Housing and Urban Development of housing authority's demolition plan for housing project, pursuant to consent decree entered in housing discrimination action, did not make it "manifestly unjust" to retroactively apply Anti-Demolition Statute, which prohibited demolition of any public housing unless it was replaced by either rent subsidy certificates or other housing units which would be available for at least 15 years, where district court had never resolved objections to demolition plan prior to enactment of Statute, and thus any rights under demolition plan had not become "matured or unconditional." United States Housing Act of 1937, § 18, as amended, 42 U.S.C.A. § 1437p.—Walker v. U.S. Dept. of Housing and Urban Development, 734 F.Supp. 1272, reversed 912 F.2d 819, on remand 1997 WL 33177466, reversed in part, vacated in part 169 F.3d 973, rehearing and suggestion for rehearing denied 181 F.3d 98, certiorari denied 120 S.Ct. 969, 528 U.S. 1131, 145 L.Ed.2d 840.—U S 82(3.5).

MATURED, PAYABLE ON DEMAND, AND PAYABLE TO ORDER

Bkrcty.W.D.Tenn. 1985. Terms "matured, payable on demand, and payable to order," in turnover provision of Bankruptcy Code [Bankr.Code, 11 U.S.C.A. § 542(b)] refers to debts that are presently payable, as opposed to those that are contingent and become payable only upon occurrence of certain act or event; thus, existence of dispute as to whether debt is owing does not preclude debt from being one that is "matured, payable on demand, or payable to order."—In re Gordons Transports, Inc., 51 B.R. 633.—Bankr 2554.

MATURED PROJECT

Bkrcty.E.D.Va. 1996. Chapter 11 debtor-limited liability company was clear example of "development project" for which identity of manager was material to very existence of enterprise, as opposed to "matured project" that required only routine management and leasing functions; thus, even under *Antonelli* standard for determining whether partnership agreement is non-assignable executory contract, managing member of debtor-limited liability company had to be treated as having been dissolved as result of Chapter 11 filing by manager's

individual members, where there were still significant development decisions to be made and parcels to be sold by debtor-company.—In re DeLuca, 194 B.R. 79.—Bankr 3106.

MATURED RIGHTS

Ariz. 1981. Vested pension rights must be distinguished from "matured rights," which are unconditional rights to immediate payment.—Johnson v. Johnson, 638 P.2d 705, 131 Ariz. 38.—Pensions 62.

MATURELY CONSIDERED

U.S.Va. 1913. The statement that the federal question was considered or "maturely considered," in the denial by the highest state court of a petition for rehearing, do not import a decision of the federal question first raised by such petition.—Consolidated Turnpike Co. v. Norfolk & O.V.R. Co., 33 S.Ct. 510, 228 U.S. 326, 57 L.Ed. 857.—Fed Cts 508.

MATURE MINOR

Md. 2001. Doctrine of "mature minor" recognizes that some minors are sufficiently mature to consent to treatment.—Grimes v. Kennedy Krieger Institute, Inc., 782 A.2d 807, 366 Md. 29, reconsideration denied.—Infants 2.

N.Y.Sup. 1990. Patient who was several weeks away from 18th birthday was not "mature minor," and, thus, court had authority to act as *parens patriae* to order life saving treatment, even if some patients under age 18 would be sufficiently mature to be entitled to make own medical decisions.—Application of Long Island Jewish Medical Center, 557 N.Y.S.2d 239, 147 Misc.2d 724.—Health 915.

MATURE OR GO TO SEED

Tex.Civ.App.—Austin 1935. Farmer who, pursuant to directions accompanying concoction which allegedly sterilized Johnson grass seeds, had permitted patches of such grass on farm to seed held not thereby precluded from recovering statutory penalties from railroad which permitted such grass to seed upon its adjoining right of way, since requirement that landowner should not have permitted such grass to "mature or go to seed" upon own land meant such ripening of seed as would reproduce. Vernon's Ann.Civ.St. art. 6401.—Childers v. Texas & N. O. R. Co., 89 S.W.2d 478, writ dismissed.—Agric 8.

MATURES

Ala.App. 1916. The defense that insured came to his death by execution for murder is not cut off by a clause providing for incontestability if the policy "matures" after the expiration of two years.—Weil v. Travelers' Ins. Co., 80 So. 348, 16 Ala.App. 641, reversed Ex parte Weil, 78 So. 528, 201 Ala. 409.—Insurance 3125(6).

Iowa 1977. Under rules relating to compulsory counterclaims, claim "matures" when holder thereof is entitled to a legal remedy. 58 I.C.A. Rules of Civil Procedure, rule 29.—Stoller Fisheries, Inc. v.

American Title Ins. Co., 258 N.W.2d 336.—Set-Off 60.

MATURE STALKS

Fla. 1978. For purpose of statute excluding “mature stalks” from definition of cannabis, stems are “mature stalks” and must be excluded when determining whether particular amount of cannabis exceeds five-gram felony standard. West’s F.S.A. §§ 893.02(2), 893.13(1)(c).—Purifoy v. State, 359 So.2d 446.—Controlled Subs 9.

Wis.App. 1997. Pieces of stems contained in bag of cuttings from marijuana plants found in defendant’s possession were not “mature stalks” of marijuana, and thus were not excluded in determining weight of marijuana possessed. St.1995, §§ 161.01(14), 161.41(1r).—State v. Martinez, 563 N.W.2d 922, 210 Wis.2d 396, review denied 568 N.W.2d 299, 211 Wis.2d 532.—Controlled Subs 100(1).

MATURING

N.D.Ill. 1937. As respects limitation of action after its accrual, there is a broad distinction between the “incurring” of a liability and the “maturing” of the liability as a prerequisite to suit.—Culhane v. Smith, 19 F.Supp. 226.—Lim of Act 43.

MATURING WITHIN THE YEAR

Colo. 1919. Under Rev.St.1908, § 3460, providing that bonds and interest coupons on bonds of irrigation district “maturing within the year” be received in payment of district bond fund tax, the bonds and coupons to be received are those maturing within the year in which the tax is levied, and not those maturing within the year when the tax is due and payable.—Chicago Title & Trust Co. v. Patterson, 178 P. 13, 65 Colo. 534.—Drains 85.

Utah 1935. Amendment to Irrigation District Act limiting provision for payment of bond fund taxes in district bonds to matured interest coupons and bonds and to proper proportion of each bond issue would not be invalid though original act provided for payment merely with bonds or interest coupons “maturing within the year,” which included coupons or bonds which had matured or which should have matured within year in which taxes were payable. Laws 1919, c. 68, § 20, as amended by Laws 1929, c. 68.—Salter v. Nelson, 39 P.2d 1061, 85 Utah 460.—Waters 216.

MATURITY

C.A.3 (Virgin Islands) 1955. “Maturity,” when applied to commercial paper, means time when paper becomes due and demandable, that is, time when an action can be maintained thereon to enforce payment.—Government of the Virgin Islands v. Brown, 221 F.2d 402.—Bills & N 129(1).

Bkrcty.N.D.Ga. 1984. Mortgage indebtedness had not reached “maturity” under Georgia attorney’s fees statute where primary consequence of mortgagor’s default, acceleration, was reversed by cure and reinstatement under Bankruptcy Code. O.C.G.A. § 13–1–11; Bankr.Code, 11 U.S.C.A.

§ 1124(2)(A).—In re Masnorth Corp., 36 B.R. 335.—Bankr 2853.40.

Bkrcty.M.D.Tenn. 1994. “Maturity,” within meaning of provision of Tennessee Pawnbrokers Act (TPA) requiring pawnbroker to retain possession of every pledge or pawn for 50 days after maturity of loan, could not, as matter of fairness, logic or law, be date of execution of pawn agreement, unless that agreement called for immediate repayment on date of execution or unless pawnbroker had accelerated loan upon default on same date; and thus, 50-day period began to run, at earliest, on first date of nonpayment at which time pawnbroker could have accelerated balance. T.C.A. § 45–6–211.—In re Lynn, 173 B.R. 894, as amended.—Cons Cred 6.

Ariz. 1993. When trial court considers age of defendant in mitigation in capital murder prosecution, it considers not only defendant’s chronological age, but also defendant’s intelligence, maturity, and life experiences, and “maturity” is evidenced in part by degree of defendant’s participation in crime. A.R.S. § 13–703, subd. G, par. 5.—State v. Herrera, 850 P.2d 100, 174 Ariz. 387.—Sent & Pun 1714.

Cal.App. 1 Dist. 1935. “Maturity” means termination of the period a note or other obligation has to run.—Pacific States Savings & Loan Co. v. Hollywood Knickerbocker, 52 P.2d 1014, 11 Cal.App.2d 56.

Cal.App. 1 Dist. 1932. According to the testimony, the word “maturity,” as used in a contract for the sale of green tomatoes which, under the contract, were required to be grade “United States No. 1” tomatoes and properly matured, meant about to ripen.—Alvernaz v. H.P. Garin Co., 16 P.2d 683, 127 Cal.App. 681.

Cal.App. 1 Dist. 1922. A written contract for the purchase of land, expiring by its terms November 25, 1919, by which the buyer assumed a parol installment contract of the seller covering the same land, and extending until December 1, 1924, payment of the balance to be “one-third at maturity of this agreement and one-third six months from maturity of this contract & bal. one year,” held not capable of specific performance at the suit of the purchaser, the terms of the agreement not being sufficiently certain to make the precise act to be done clearly ascertainable, as required by Civ.Code, § 3390, in that the time for payment of the balance was left uncertain; “maturity” generally referring to the time when the conditions and obligations of contracts are to be completely fulfilled.—Patterson v. Reddish, 204 P. 565, 56 Cal.App. 197.—Spec Perf 30.

Cal.App. 2 Dist. 1934. Under guaranty of payment of notes “at maturity,” suit on guaranty held not premature when brought after acceleration of notes, since term “maturity” should be construed to mean date when holder of note had legal right to begin action to force payment thereof.—Burrill v. Robert Marsh & Co., 31 P.2d 823, 138 Cal.App. 101.—Guar 47.

Del.Super. 1943. "Maturity" means the time when note became due and demandable, or time when an action could be maintained thereon to enforce payment.—*Cooling v. Springer*, 30 A.2d 466, 42 Del. 228, 3 Terry 228.—*Bills & N* 129(1).

Ind.App. 1894. "Maturity," as used in an insurance policy, stating that it is written for the benefit of the insured, if living at the maturity, thereof, refers to the maturing of the policy during the lifetime of the insured.—*Union Cent. Life Ins. Co. v. Woods*, 37 N.E. 180, 11 Ind.App. 335, rehearing denied 39 N.E. 205, 11 Ind.App. 335.

Mass. 1903. Where a note bearing a given date was payable four months after, it reached its "maturity" four months after date.—*Seabury v. Sibley*, 66 N.E. 603, 183 Mass. 105.

Mo. 1906. Defendants, in payment of property bought of plaintiff, transferred bonds maturing November 27, 1913, and secured by a trust deed of Iowa property, and by a contract of guaranty agreed, "if said bonds were not paid at maturity" and the trust deed was foreclosed, to be present at the sale and bid a specified amount for the property. In the bonds was a reservation of the right to pay them before maturity, and in the trust deed it was provided that, if default was made in the payment of interest, the principal, as well as the interest, should become due at the election of the trustee. On the back of the bonds was a trustee's certificate that the bonds were issued in conformity with the trust deed. *Held*, that "maturity," as used in the agreement, was the maturity as fixed by the trust deed, and not the one specified in the bonds.—*Binz v. Hyatt*, 98 S.W. 637, 200 Mo. 299.—*Guar* 47.

Mo.App. 1914. Under St. Louis Charter, art. 6, § 25, providing that tax bills for public improvements, if paid at maturity, shall draw interest at the rate of 6 per cent., but if not then paid shall draw interest at 6 per cent. until the date of maturity and 8 per cent. thereafter until paid, and that if any installments are not paid when due all remaining installments shall, at the option of the holder, become due and collectible, with interest thereon as aforesaid, the date of "maturity" of the installment from which the increased interest is to be charged is the date originally fixed for payment, but not the date of the exercise of the holder's option to declare all installments due on default in the payment of one.—*Eyermann v. Stevens*, 170 S.W. 330, 185 Mo.App. 168.

Mont. 1918. The provision of Rev.Codes, § 5918, that, if the instrument is by its terms payable at a special place and the maker is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part, can have no application to a demand note; "maturity" as used in such provision meaning the time when a note or bill becomes due.—*United States Nat. Bank of Red Lodge v. Shupak*, 172 P. 324, 54 Mont. 542.

Neb. 1997. "Maturity" of pregnant minor, which court must assess in determining whether to allow minor to bypass statutory parental notifica-

tion requirement for obtaining abortion, is not solely matter of social skills, level of intelligence, or verbal skills, but, more importantly, is matter of experience, perspective, and judgment; factors for determining experience include, but are not limited to, minor's prior work experience, experience in living away from home, and experience in handling personal finances; factors for determining perspective include, but are not limited to, minor's appreciation and understanding of relevant gravity and possible detrimental impact of each available option, as well as realistic perception and assessment of possible short-term and long-term consequences of each of those options, particularly abortion option; factors for determining good judgment include, but are not limited to, minor's past conduct and being fully informed so as to be able to weigh alternatives independently and realistically. (Per curiam opinion of three Justices with one Justice concurring in result.) *Neb.Rev.St. § 71-6903(1)*.—*Petition of Anonymous 1*, 558 N.W.2d 784, 251 Neb. 424.—*Abort* 0.5.

N.Y.Sup. 1902. Testator died, leaving a daughter, who thereafter died, leaving a son, who sued for the construction of a holographic will of his grandfather. The will provided for a life trust in behalf of the daughter, and that after her death the income should be used for the support of her surviving children during minority, the principal to be paid at majority to such issue, but that if no issue survived, or if the issue died before "maturity," the principal should go equally to testator's "remaining children." A codicil provided for the amendment of such bequest by giving to such issue the income of the fund, instead of the principal, and, "with this end in view, I therefore give to my executors full power and authority to act as trustees of said issue, and in like manner as in the case of the daughter." *Held*, that the grandson took only a life interest in the body of the estate, and testator's remaining children took the remainder.—*Cruikshank v. Cruikshank*, 80 N.Y.S. 8, 39 Misc. 401.—*Wills* 614(17).

Okla. 1916. "Maturity," when applied to commercial paper, means the time when the paper becomes due and demandable; the time when an action can be maintained thereon to enforce payment.—*Ardmore State Bank v. Lee*, 159 P. 903, 61 Okla. 169.—*Bills & N* 129(1).

Tex.Civ.App.—Dallas 1933. Loan contract evidenced by note for principal sum drawing $7\frac{1}{2}$ per cent. interest, and note for additional $2\frac{1}{2}$ per cent. both notes being payable in annual installments with 10 per cent. interest after "maturity," and having acceleration clauses, *held* usurious and court properly credited principal note with entire interest paid. *Vernon's Ann.Civ.St. art. 5069*.—*Reynolds Mortg. Co. v. Thomas*, 61 S.W.2d 1011, reversed 81 S.W.2d 52, 124 Tex. 570.—*Usury* 22.

Tex.Civ.App. 1909. A note payable with interest from maturity, contained a blank space after the word "maturity," and the payee after execution filled up such space by writing therein the word "date," so that the note called for interest after "maturity date." *Held*, that the alteration was not

a material change which would prevent recovery on the note.—*Baldwin v. Haskell Nat. Bank*, 124 S.W. 443, reversed 133 S.W. 864, 104 Tex. 122, modified on rehearing 134 S.W. 1178, 104 Tex. 122.—*Alt of Inst* 7.

MATURITY BENEFITS

Minn. 1907. A fraternal beneficiary association, which agrees to pay dividends or "maturity benefits" to its living members not under disability, and which agrees to pay small disability benefits as a loan and an insignificant death benefit for a flat premium, is selling "endowments," a business which beneficiary associations are forbidden by statute to engage in.—*National Protective Legion v. O'Brien*, 112 N.W. 1050, 102 Minn. 15.

MATURITY DATE

Cal. 1931. "Maturity date" of substituted note, which fixed date note sued on was payable, was date on which it became payable.—*Morehouse v. Allen*, 300 P. 961, 213 Cal. 1.—*Bills & N* 138.

La.App. 5 Cir. 1997. "Maturity date" is date on which principal amount of note, draft, acceptance, bond, or other debt instrument becomes due and payable.—*Cooper v. Gegenheimer*, 694 So.2d 1058, 96-874 (*La.App. 5 Cir.* 4/29/97).—*Bills & N* 129(1).

Tex.Civ.App. 1909. A note payable with interest from maturity, contained a blank space after the word "maturity," and the payee after execution filled up such space by writing therein the word "date," so that the note called for interest after "maturity date." Held, that the alteration was not a material change which would prevent recovery on the note.—*Baldwin v. Haskell Nat. Bank*, 124 S.W. 443, reversed 133 S.W. 864, 104 Tex. 122, modified on rehearing 134 S.W. 1178, 104 Tex. 122.—*Alt of Inst* 7.

MATURITY OF DEBT

Ala. 1982. For purposes of determining whether six-month time period after maturity of indebtedness for filing of suit to enforce lien has run, "maturity of debt" can be defined as date the debt accrued so as to be due and payable. Code 1975, § 35-11-211.—*Starek v. TKW, Inc.*, 410 So.2d 35, 33 A.L.R.4th 1009.—*Mech Liens* 260(3).

N.Y.A.D. 2 Dept. 1941. Where extension agreement fixed interest payable on mortgage during period of extension at rate of 4½ per cent. with proviso that in event of any default interest provisions should be void and interest should become payable at original rate of six per cent. from date of such default, the interest rate was not increased from 4½ per cent. to 6 per cent. because of "maturity of debt" within statute providing that rate of interest on debt evidenced by mortgage should not be increased by reason of maturity of debt during emergency period, since the rate of 6 per cent. was as a matter of law the rate "specified in such obligation" within further provision of the statute that interest on such obligation should continue after maturity at rate specified in such obligation. *Civil Practice Act*, § 1077-cc.—*Hammond v. Law-*

rence Investing Co., 29 N.Y.S.2d 99, 262 A.D. 900, appeal granted, question certified 30 N.Y.S.2d 398, 262 A.D. 963.—*Mtg* 306.

Tenn. 1944. Where mortgage secured purchase money evidenced by three serial notes with acceleration provision, the right to foreclose mortgage lien did not fully mature so that 10-year limitation did not begin to run until maturity date of the third and last of the serial notes under statute providing that lien of mortgage shall be barred unless suit to enforce same is brought within 10 years from the "maturity of debt". Code 1932, § 8590.—*Lawman v. Barnett*, 177 S.W.2d 121, 180 Tenn. 546, 153 A.L.R. 772.—*Lim of Act* 51(2).

MATURITY OF SUCH INDEBTEDNESS

Tex.Civ.App.—Beaumont 1922. Under *Vernon's Sayles' Ann.Civ.St.* 1914, art. 5694, *Vernon's Ann. Civ.St.* arts. 5520, 5521, barring the right to recover land under a reserved superior title, or enforce the lien for the purchase money note four years after the maturity of the indebtedness, but providing that the lien reserved in the note may be extended as provided in article 5695, 5522, the extension of the note and lien extends the period of limitation against recovery under the superior title, since the term "maturity of such indebtedness" in that event must be reckoned from the maturity date in the renewal contract.—*Wier v. Yates*, 237 S.W. 623, writ refused.—*Ven & Pur* 278.

MATURITY OF SUCH USURIOUS CONTRACT

Okla. 1920. The term "maturity of such usurious contract," as used in *Const. art. 14, § 3*, and *Rev.Laws* 1910, § 1005, 15 *Okl.St.Ann.* § 267, providing that an action to recover usury paid shall be brought within two years after the maturity of such usurious contract, means the time of fruition of such usurious contract by the payment of interest.—*Mires v. Hogan*, 192 P. 811, 79 *Okla.* 233, 1920 *OK* 308.—*Usury* 109.

MATURITY VALUE

N.J.Err. & App. 1941. When building and loan association shares reciting that annual "profit" was guaranteed and that shares would be redeemed by payment of "maturity value," quoted phrases meant the same as "interest" and "par value" in similar provisions in other shares.—*Veix v. Seneca Bldg. & Loan Ass'n of Newark*, 19 A.2d 219, 126 *N.J.L.* 314, 133 A.L.R. 1486.—*B & L Assoc* 11, 12(3).

N.J.Ch. 1943. When installment shares in a building and loan association mature, the profits apportioned to such shares coalesce with the dues paid on them and form a single sum constituting the "maturity value" none of which is "surplus", but it is all a part of the "capital" of the association, distributable forthwith. *N.J.S.A.* 17:12-48, 17:12-53.—*In re Sixth Ward Bldg. & Loan Ass'n of Newark*, 34 A.2d 292, 134 *N.J.Eq.* 98.—*B & L Assoc* 12(1).

MATZOOON

N.Y.Sup. 1895. The word "Matzoon," which has been for centuries in Armenia the name of an article of food or diet prepared from sterilized and fermented milk, can be appropriated as a trade-name by the person who introduced the article and the name into this country.—*Dadirrian v. Theodorian*, 73 N.Y.St.Rep. 309, 37 N.Y.S. 611, 15 Misc. 300.—Trade Reg 40.

MAUSOLEUM

Cal.App. 2 Dist. 1992. Business which stored bodies in cryonic suspension was not operating a "mausoleum" within the meaning of statute identifying permissible methods of treating human remains. West's Ann.Cal.Health & Safety Code §§ 7003, 7005, 7009, 7012, 7015, 7153(a).—*Alcor Life Extension Foundation, Inc. v. Mitchell*, 9 Cal. Rptr.2d 572, 7 Cal.App.4th 1287.—Dead Bodies 1.

Ill.App. 1 Dist. 1993. For purposes of village's zoning ordinance, "mausoleum" was use separate and distinct from that of "cemetery," and cemetery was not entitled to building permit for proposed mausoleum without first obtaining special use permit; although ordinance's use table contained words "cemeteries, crematories or mausoleums" on single line and provided no separate listings for such terms, ordinance's provision that "cemeteries, crematories, or mausoleums" required special use permits indicated that village intended that mausoleums and cemeteries be considered separate uses, and definition of "cemetery" did not include mausoleums since mausoleums afford far more intense use of same land.—*Memory Gardens Cemetery, Inc. v. Village of Arlington Heights*, 190 Ill.Dec. 238, 621 N.E.2d 107, 250 Ill.App.3d 553, appeal denied 191 Ill.Dec. 621, 624 N.E.2d 809, 153 Ill.2d 561.—Zoning 278.1, 384.1.

Md. 1936. Exhibit reading, "Mr. W. Svanter Keeper Permit Mr. ----- to put tombstone for Corpse Weisblatt * * * by order of Nathan Bagan Chairman of Cemetery ----- Secretary," held insufficient to warrant decree for specific performance of alleged agreement to permit complainant to erect mausoleum over grave in defendant's cemetery. "Tombstone" is stone marking place of burial and usually inscribed with memorial of deceased, while "mausoleum" is tomb of more than ordinary size or architectural pretensions, especially a grand monumental structure.—*Anshe Sephard Congregation v. Weisblatt*, 185 A. 107, 170 Md. 390.

Wash. 1945. The words "mausoleum" and "cemetery", as used in Tacoma charter provision against extension of existing cemeteries and against establishment of mausoleums or crematories within limits of city, are not synonymous although each is a place of interment.—*Oakwood Co. v. Tacoma Mausoleum Ass'n*, 157 P.2d 595, 22 Wash.2d 692, opinion adhered to on rehearing 161 P.2d 193, 22 Wash.2d 692.—Cem 3.

MAXILLOFACIAL PROSTHETIC SERVICES CONSIDERED NECESSARY FOR ADJUNCTIVE TREATMENT

Or.App. 1995. Determination of whether treatment constitutes "maxillofacial prosthetic services considered necessary for adjunctive treatment" for which coverage is statutorily mandated under group health insurance policies depends on whether statutory definition of that phrase is satisfied, and does not require separate and independent inquiry about whether treatment is "necessary for adjunctive treatment." ORS 743.706(1, 2).—*Blanchard By and Through Blanchard v. Kaiser Foundation Health Plan of the Northwest*, 901 P.2d 943, 136 Or.App. 466, review denied 907 P.2d 248, 322 Or. 362.—Insurance 2484.

Or.App. 1995. Statutory definition of "maxillofacial prosthetic services considered necessary for adjunctive treatment," for which coverage is statutorily mandated under group health insurance policies, was satisfied by proposed treatment for insured suffering from congenital partial anodontia which entailed bone graft procedure that was intended to build up jaw to enable teeth to be attached with titanium screws, to improve his facial configuration and functioning, and to control or eliminate pain. ORS 743.706(2).—*Blanchard By and Through Blanchard v. Kaiser Foundation Health Plan of the Northwest*, 901 P.2d 943, 136 Or.App. 466, review denied 907 P.2d 248, 322 Or. 362.—Insurance 2484.

Or.App. 1992. Material issues of fact, precluding summary judgment in favor of coverage, existed as to whether proposed implantation of titanium fixtures in anterior maxillary and mandibular arches, dental prosthetics and orthodontic care for dental patient born with partial anodontia, was "maxillofacial prosthetic services considered necessary for adjunctive treatment" of medical condition so as to be inculcable within medical plan; there was evidence that proposed treatment was same as would have been provided for persons losing substantial number of teeth due to disease or extraction. ORS 743.706(2).—*Blanchard By and Through Blanchard v. Kaiser Foundation Health Plan of the Northwest*, 844 P.2d 248, 117 Or.App. 377, review denied 852 P.2d 838, 316 Or. 142, appeal after remand 901 P.2d 943, 136 Or.App. 466, review denied 907 P.2d 248, 322 Or. 362.—Judgm 181(23).

MAXIM

Mo. 1907. A "maxim," says Coke, "is so called because its dignity is chiefest, and its authority the most certain, and because it is universally approved by all." Coke, Litt. 11a. Again he says: "A maxim is a proposition to be of all men confessed and granted without proof, argument, or discourse." Coke, Litt. 67a. "Maxims," says Sir James Mackintosh, "are the condensed good sense of nations."—*Chrisman v. Linderman*, 100 S.W. 1090, 202 Mo. 605, 10 L.R.A.N.S. 1205, 119 Am.St.Rep. 822.

MAXIM EXPRESSIO UNIUS EST EXCLUSIO AL-
TERIUS

Neb. 1956. The “maxim, expressio unius est exclusio alterius” means that where a statute enumerates a thing upon which it is to operate or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned, unless the legislature has plainly indicated a contrary intention.—*Calvary Baptist Church v. Coonrad*, 77 N.W.2d 821, 163 Neb. 25.—Statut 195.

N.J.Super.A.D. 2001. The legal “maxim expressio unius est exclusio alterius,” meaning the express mention of one thing implies exclusion of all others, is merely an aid in determining legislative intent and must be used with caution; the ultimate question is whether in a precise context an express provision with respect to a portion of a topic reveals by implication a decision with respect to the remainder.—*Elizabeth Bd. of Educ. v. New Jersey Transit Corp.*, 776 A.2d 821, 342 N.J.Super. 262.—Statut 195.

MAXIMIZATION OF FEDERAL FUNDS

N.Y.A.D. 3 Dept. 1987. “Maximization of Federal funds,” for purposes of regulations governing food stamp and aid to families with dependent children program reimbursements to city, depended on whether maximum funds allowable, as determined by federal Government, were reimbursed, rather than on city’s original request for funds. *McKinney’s Social Services Law* §§ 20, 29, 34, 56, 61, 62, 95, 95, subd. 6(a), 157 et seq., 343 et seq.; U.S.C.A. Const.Amends. 5, 14.—*City of New York v. Lawton*, 515 N.Y.S.2d 903, 128 A.D.2d 202.—Agric 2.6(1); Social S 194.

MAXIMIZE

Mo.App.W.D. 2001. State standard for educational services provided to learning disabled student was higher than federal standard imposed under Individuals with Disabilities Education Act (IDEA), and thus remand for consideration of services in light of state standard was required, given that IDEA required mere educational benefit to student, whereas state statute required maximizing capabilities of handicapped children, term “benefit” simply meant to be useful or profitable to, aid, advance, or improve, whereas definition of “maximize” was to increase to highest degree, state defined “handicapped children” as those who required special educational services to develop to maximum capacity, and “special educational services” as those designed to maximize capabilities, and state board of education was not empowered to adopt different standard. *Individuals with Disabilities Education Act*, § 601 et seq., as amended, 20 U.S.C.(1994 Ed.) § 1400 et seq.; V.A.M.S. § 162.670 et seq.—*Lagares v. Camdenton R-III School Dist.*, 68 S.W.3d 518, rehearing, transfer denied, and transfer denied.—*Schools 148(3)*, 155.5(5).

MAXIMS

N.D.Ohio 1930. “Maxims” are but attempted general statements of rules of law and are law only

to extent of application in adjudicated cases.—*Swetland v. Curtiss Airports Corporation*, 41 F.2d 929, modified 55 F.2d 201, 83 A.L.R. 319.—*Equity 54*.

Mo. 1907. A “maxim,” says Coke, “is so called because its dignity is chiefest, and its authority the most certain, and because it is universally approved by all.” Coke, Litt. 11a. Again he says: “A maxim is a proposition to be of all men confessed and granted without proof, argument, or discourse.” Coke, Litt. 67a. “Maxims,” says Sir James Mackintosh, “are the condensed good sense of nations.”—*Chrisman v. Linderman*, 100 S.W. 1090, 202 Mo. 605, 10 L.R.A.N.S. 1205, 119 Am.St.Rep. 822.

MAXIMUM

C.A.8 (Iowa) 1996. For sentencing purposes, “maximum” ordinarily means upper limit of a range, the greatest quantity possible or permissible.—*U.S. v. Fountain*, 83 F.3d 946, rehearing and suggestion for rehearing denied, certiorari denied 117 S.Ct. 2412, 520 U.S. 1253, 138 L.Ed.2d 178, appeal after remand 223 F.3d 927, rehearing and rehearing denied, certiorari denied 121 S.Ct. 2195, 532 U.S. 1053, 149 L.Ed.2d 1026.—*Sent & Pun 1127*.

N.D.Ga. 1993. Under Georgia law, “standby commitment letter,” whereby mortgage company agreed to lend apartment complex amount to be later determined, was at most a present promise to extend offer of loan for amount to be determined upon completion of analysis of apartment complex’s ability to meet its loan commitments; letter was not commitment to offer maximum amount contemplated since use of word “maximum” implied lesser amount was contemplated by parties.—*Breckenridge Creste Apartments, Ltd. v. Citicorp Mortg., Inc.*, 826 F.Supp. 460, affirmed 21 F.3d 1126.—*Contracts 25*.

W.D.Tenn. 1995. Under career offender guideline, which calculates base offense level by reference to statutory “maximum” sentence for current offense, “maximum” referred to maximum sentence including statutory penalties for multiple offenders; full, enhanced sentence could never be imposed if guideline excluded enhancements from its calculation of “maximum” sentence, and Congress intended that multiple offenders receive sentence “at or near” maximum enhanced sentence. 28 U.S.C.A. § 994(h); U.S.S.G. § 4B1.1, 18 U.S.C.A.—*U.S. v. Benson*, 917 F.Supp. 543.—*Sent & Pun 1400*.

Ariz. 1976. As respects modification of injunction, prohibiting city’s transportation of water out of critical ground water area, so as to permit city, if it purchased lands in area under cultivation and used water formerly used for growing crops as source of supply for municipal customers, to withdraw amount equal to, “annual historical maximum use” upon land so acquired, “maximum” means greatest amount, “historical,” is used in sense of “based on or dealing with history” and introduces concept of period of time, so that “maximum” would not be confined to greatest use of any single year but would be average of annual maximum

amount of water used, and “use” means consumptive use; consequently, words “annual historical maximum use” did not permit city to pump and transport greatest amount of water used in any year in farming of parcels purchased by city, but rather, city could pump and transport amount of water equal to annual historical maximum use on parcels of land it had retired from cultivation. A.R.S. § 45-301 et seq.—*Jarvis v. State Land Dept.*, 550 P.2d 227, 113 Ariz. 230.—*Waters* 107(3).

Cal.App. 4 Dist. 1941. In determining correctness of instruction that violation of speed law is of no consequence unless it is the “maximum” cause of injuries, appellate court is bound by official record showing that the word “maximum” and not the word “proximate” as contained in proposed instruction was used. Vehicle Code, § 510, St.1935, p. 176.—*Stevenson v. Fleming*, 117 P.2d 717, 47 Cal.App.2d 225.—App & E 662(1).

Cal.App. 4 Dist. 1941. An instruction that violation of basic speed law is of no consequence unless it is the “maximum” cause of injuries was erroneous, notwithstanding instruction was general and was not specifically pointed at defendant where it could have been pointed to no other person and instruction was in conflict with other proper instructions on proximate cause, none of which was given in connection with statute mentioned. Vehicle Code, § 510, St.1935, p. 176.—*Stevenson v. Fleming*, 117 P.2d 717, 47 Cal.App.2d 225.—*Autos* 246(22); *Trial* 243.

Conn. 1968. Where judgment which, by agreement of parties, embodied stipulation concerning work defendants were to have performed for plaintiff by competent contractor, provided that plaintiffs’ pond should be dredged to “maximum” depth of five and one-half feet, trial court, as trier of facts in action for damages for failure to perform work, erred in determining that pond was to be dredged to an “average” depth of five and one-half feet, since word “maximum” could not be interpreted to mean “average.”—*Garguilo v. Moore*, 242 A.2d 716, 156 Conn. 359.—*Judgm* 921.

Ill. 1935. Where statute prescribed that compensation for death should be four times deceased’s average annual earnings but not less than \$2,500 nor more than \$4,000, and amendment provided that “such maximum” should be increased to \$4,800 in case of two children under 16, widow of deceased earning \$1,010 during previous year and leaving two children under 16 held entitled to only \$4,040 instead of \$4,800, since “such maximum” meant greatest amount provided in original statute based on four times average annual earnings of deceased employee. S.H.A. ch. 48, § 144, subds. (a), (h). “Maximum” means the highest or greatest amount, quality, value, or degree.—*Moweaqua Coal Corp. v. Industrial Commission*, 195 N.E. 607, 360 Ill. 194.

Mich. 1948. The word “maximum” in provision of Workmen’s Compensation Act that amounts specified in schedule of disability therein enumerated are subject to same limitations as to “maximum and minimum as above stated” refers to prior statement in provision that period covered by com-

pensation shall not be greater than 500 weeks from date of injury. Comp.Laws Supp.1945, § 8426.—*Clements v. Chrysler Corp.*, 33 N.W.2d 82, 321 Mich. 558.—*Work Comp* 869.

Mich. 1906. The word “maximum” is defined as meaning the greatest, superlative of great; the greatest quantity or value attainable in a given case.—*Manaca v. Ionia Circuit Judge*, 110 N.W. 75, 146 Mich. 697.

Ohio 1944. It will be presumed that General Assembly, when it used phrase “maximum award established by law” in joint resolution setting forth proposed amendment to Constitution to provide that when injuries, disease, or death has resulted from employer’s failure to comply with specific safety requirements, not more than 50 nor less than 15 per cent. of maximum award as established by law shall be added to amount of compensation, had in mind the then existing statutes relating to workmen’s compensation, and used words “maximum” and “award” in same sense as used in such statutory provisions. 110 Ohio Laws, p. 631; Const. art. 2, § 35.—*State ex rel. Engle v. Industrial Commission*, 52 N.E.2d 743, 142 Ohio St. 425, 27 O.O. 370.—*Work Comp* 941.

Utah App. 1994. “Maximum,” in context of requirement that state hospital patient receive maximum benefit available from treatment at hospital prior to transfer to state prison, is defined as the greatest quantity or value attainable in a given case, and nowhere in the definition is there anything to suggest that its meaning can connote something less than the highest degree. U.C.A.1953, 77-16a-5 (Repealed).—*Dall v. State*, 888 P.2d 680.—*Mental H* 438.

Wash. 1917. Under Rem.Code 1915, § 4137 et seq., providing for the establishment and organization of drainage districts, and that the jury shall ascertain the maximum amount of benefits per acre to be derived by each landowner from the construction of the proposed improvement, where the jury, in an original proceeding for a drainage improvement, found the maximum amount of benefits per acre to be derived by each of the landowners within the district from the construction of the drainage improvement, and the court entered its decree thereon, which was not modified or reversed, such decree was conclusive in a proceeding to levy a supplemental assessment; “maximum” meaning the greatest quantity or highest in degree attainable or attained, or the greatest or highest allowed by law or authority.—*Poolman v. Langdon*, 162 P. 578, 94 Wash. 448.

MAXIMUM ALLOWABLE PERIOD

La.App. 4 Cir. 1969. Under statute providing that every inter vivos or testamentary trust shall terminate at expiration of ten years from settlor’s death as to beneficiary who is a natural person or until death of beneficiary, whichever is the longer period, and providing that trust shall be enforced as to beneficiary for maximum allowable period if terms of trust purport to require period of duration as to any beneficiary longer than maximum allow-

able period, the “maximum allowable period” is not ten years from settlor’s death on theory that phrase “whichever is the longer period”, by using word “longer” instead of “shorter”, had no meaning. LSA-R.S. 9:1794, Act No. 209 of 1952.—Succession of Rabito, 229 So.2d 380.—Trusts 60; Wills 686(1).

MAXIMUM AND MINIMUM

N.J.Super.A.D. 1952. The terms “maximum and minimum” as used in statute requiring State Prison sentences to be for a maximum and minimum term are separate and distinctly opposite in meaning, with the latter indicating the least quantity or amount assignable, and the former the greatest quantity or amount in a given case. N.J.S. 2A:113-3, 2A:113-4, 2A:164-17, N.J.S.A.—State v. Moore, 91 A.2d 342, 21 N.J.Super. 419.—Sent & Pun 1126, 1127.

MAXIMUM AND MINIMUM RIGHT

Utah 1963. “Maximum and minimum right” within Cox Water Rights Decree meant that user having maximum and minimum right was entitled to use its minimum right before subsequent appropriators having either maximum-minimum rights or one-flow rights were satisfied and that after minimum rights of subsequent maximum-minimum right holders and requirements of subsequent one-flow right holders were met, prior appropriators could use water above minimum right until maximum was reached.—Salina Creek Irr. Co. v. State, 379 P.2d 376, 14 Utah 2d 146.—Waters 142.

MAXIMUM AWARD

Ohio App. 10 Dist. 1956. Under workmen’s compensation provision in constitution allowing Commission to make an additional award for employer’s violation of specific requirement, not greater than fifty nor less than fifteen percent of maximum award established by law, phrase “maximum award” means the maximum amount per week which the Commission may award the injured workman. Const. art. 2, § 35.—State ex rel. Allied Wheel Products, Inc. v. Industrial Commission, 145 N.E.2d 538, 76 Ohio Law Abs. 46, affirmed 139 N.E.2d 41, 166 Ohio St. 47, 1 O.O.2d 190.—Work Comp 2046.

MAXIMUM AWARD ESTABLISHED BY LAW

Ohio 1944. It will be presumed that General Assembly, when it used phrase “maximum award established by law” in joint resolution setting forth proposed amendment to Constitution to provide that when injuries, disease, or death has resulted from employer’s failure to comply with specific safety requirements, not more than 50 nor less than 15 per cent. of maximum award as established by law shall be added to amount of compensation, had in mind the then existing statutes relating to workmen’s compensation, and used words “maximum” and “award” in same sense as used in such statutory provisions. 110 Ohio Laws, p. 631; Const. art. 2, § 35.—State ex rel. Engle v. Industrial Commission, 52 N.E.2d 743, 142 Ohio St. 425, 27 O.O. 370.—Work Comp 941.

Ohio 1944. Under 1923 amendment to Constitution effective in 1924, where Industrial Commission finds workman’s injuries, disease, or death resulted from employer’s failure to comply with lawful requirements, it becomes mandatory duty of commission to grant such additional compensation as shall be just, not greater than 50 nor less than 15 per cent. of “maximum award established by law”. Const. art. 2, § 35.—State ex rel. Engle v. Industrial Commission, 52 N.E.2d 743, 142 Ohio St. 425, 27 O.O. 370.—Work Comp 941.

MAXIMUM COLLECTIBLE COMPENSATION

Minn. 1953. Where dispute as to extent of liability of employer and insurer for death of employee in 1950 from silicosis and cerebral hemorrhage was settled by compromise agreement to pay dependent widow and minor child \$5,000 compensation, the “maximum collectible compensation,” was not paid within meaning of statute providing for additional compensation from special fund to widow with dependent child after payment of maximum collectible compensation for death of husband and father. M.S.A. §§ 176.01 et seq., 176.12, subd. 19, 176.13(c), 176.661, 176.664.—Skjefstad v. Red Wing Potteries, Inc., 60 N.W.2d 1, 240 Minn. 38.—Work Comp 1030.1(1).

MAXIMUM COLLECTIBLE RENT

N.Y.City Civ.Ct. 1973. The “maximum collectible rent” within order which continued senior citizen rent increase exemption and which fixed proper rent as the “maximum collectible rent” if it exceeded one-third of tenant’s monthly disposable income was rent provided by lease and not the higher theoretical Rent Commission legal maximum rent for the particular apartment. Administrative Code, § Y 51-5.0, subd. n(3).—Pollock v. Karpowicz, 347 N.Y.S.2d 386, 75 Misc.2d 282.—Land & Ten 200.40.

MAXIMUM COMPENSATION BENEFITS

N.M.App. 1984. “Maximum compensation benefits,” as used in statute providing that no worker’s compensation claim can be filed by any workman who is receiving maximum compensation benefits except in certain circumstances, refers to maximum compensation benefit payments for disability. NMSA 1978, § 52-1-69.—Paternoster v. La Cuesta Cabinets, Inc., 689 P.2d 289, 101 N.M. 773.—Work Comp 842.

MAXIMUM CONTACTS

Pa. 1997. Children’s annual visits with maternal grandparents in Pennsylvania, maternal grandparents’ visits with children in Belgium, and mother’s birth in Pennsylvania and residence in Pennsylvania until marriage were not “maximum contacts” under Uniform Child Custody Jurisdiction Act (UCCJA). 23 Pa.C.S.A. § 5344.—Dincer v. Dincer, 701 A.2d 210, 549 Pa. 309, reargument denied.—Child C 816.

MAXIMUM CONTAMINANT LEVEL

Cal.App. 5 Dist. 1988. “Action level” adopted by the Department of Health Services for the pres-

ence of particular fumigant in drinking water was not a "maximum contaminant level" with which small public water systems had to comply pursuant to the Health and Safety Code. *West's Ann.Cal. Health and Safety Code* § 4010.8.—*Paredes v. County of Fresno*, 249 Cal.Rptr. 593, 203 Cal.App.3d 1.—*Waters* 196.

MAXIMUM CREDIT ALLOWABLE TO ESTATE AGAINST THE UNITED STATES ESTATE TAX

Ohio Prob. 1946. The quoted words, in addition estate tax statute providing that in no event shall tax exceed amount which "maximum credit allowable to estate against the United States estate tax" exceeds the credit theretofore provided in statute, limit amount of state additional tax to whatever credit is allowed by collector of internal revenue who computes federal estate tax liability.—*In re Robinson's Estate*, 72 N.E.2d 109, 34 O.O. 298.

MAXIMUM CURE

C.A.5 (La.) 1979. "Maximum cure" is achieved when it appears probable that further treatment will result in no betterment of a seaman's condition.—*Pelotto v. L & N Towing Co.*, 604 F.2d 396.—*Seamen* 11(6).

C.A.3 (Pa.) 1996. Employer's obligation to furnish maintenance and cure continues until seaman has reached point of "maximum cure", that is until seaman is cured or his condition is diagnosed as permanent and incurable.—*O'Connell v. Interocean Management Corp.*, 90 F.3d 82.—*Seamen* 11(6).

D.Alaska 1993. "Maximum cure" is reached when it is medically determined that further improvement in seaman's health is not reasonably possible.—*Sefcik v. Ocean Pride Alaska, Inc.*, 844 F.Supp. 1372.—*Seamen* 11(6).

D.Del. 1997. Injured seaman, even one who is permanently disabled, is not entitled to maintenance for the rest of his life; rather, shipowner's obligation continues until such time as the seaman reaches "maximum cure," that is, when the seaman has recovered or when it is determined that medical treatments will no longer improve his condition.—*Smith v. Delaware Bay Launch Service, Inc.*, 972 F.Supp. 836.—*Seamen* 11(6).

M.D.La. 1980. Seaman is entitled to maintenance and cure if he is injured or becomes ill in service of vessel, without regard to negligence of his employer or to unseaworthiness of ship; and "maintenance" is a per diem living allowance for food and lodging and "cure" is payment for medical, therapeutic and hospital expenses; and employer's duty to pay maintenance and cure continues until seaman has reached "maximum cure."—*Kratzer v. Capital Marine Supply, Inc.*, 490 F.Supp. 222, affirmed 645 F.2d 477.—*Seamen* 11(1).

M.D.La. 1980. "Maximum cure" of injured seaman is achieved when it appears that further treatment will result in no betterment of his condition.—*Kratzer v. Capital Marine Supply, Inc.*, 490 F.Supp. 222, affirmed 645 F.2d 477.—*Seamen* 11(6).

D.Md. 1993. "Maximum cure" for purposes of maritime remedies of maintenance and cure for injured seamen is point at which incapacity is, from medical standpoint, declared permanent.—*Mitola v. Johns Hopkins University Applied Physics Laboratory*, 839 F.Supp. 351.—*Seamen* 11(6).

E.D.Mo. 1985. Under doctrine of maintenance and cure, "maximum cure" is achieved when further medical treatment will result in no betterment of the seaman's condition.—*Flowers Transp., Inc. v. Fox*, 606 F.Supp. 263.—*Seamen* 11(6).

E.D.N.Y. 1991. Right to maintenance of seaman taken ill or injured in service to vessel continues until seaman recovers or his condition permanently stabilizes, a state known as "maximum cure."—*Gillikin v. U.S.*, 764 F.Supp. 261.—*Seamen* 11(6).

La.App. 1 Cir. 1993. "Maximum cure," also known as "maximum medical recovery," is achieved when it is probable that further treatment will result in no betterment of seaman's condition, for purposes of determining whether seaman's employer must pay maintenance and cure; when it appears that condition is incurable or that further treatment will merely relieve pain and suffering and will not otherwise improve physical condition, it is proper to declare point of "maximum medical cure."—*Jordan v. Intercontinental Bulk Tank Corp.*, 621 So.2d 1141, writ denied 623 So.2d 1335, writ denied 623 So.2d 1336, reconsideration denied 625 So.2d 1026, certiorari denied 114 S.Ct. 926, 510 U.S. 1094, 127 L.Ed.2d 219.—*Seamen* 11(6).

La.App. 1 Cir. 1987. "Maximum cure" is achieved, for purposes of determining seaman's entitlement to maintenance and cure benefits, when it is probable that further treatment will result in no betterment of seaman's condition; where it appears that condition is incurable or that further treatment will merely relieve pain and suffering and not otherwise improve physical condition, it is proper to declare the point of maximum cure.—*Simmons v. Hope Contractors, Inc.*, 517 So.2d 333, writ denied 518 So.2d 510.—*Seamen* 11(6).

La.App. 3 Cir. 1998. "Maximum cure" is reached when it appears that seaman's condition is incurable, or that future treatment will merely relieve pain and suffering but not otherwise improve seaman's physical condition.—*Navarro v. Aries Marine Corp.*, 713 So.2d 613, 1997-1630 (La.App. 3 Cir. 4/29/98), writ denied 723 So.2d 958, 1998-1446 (La. 9/4/98).—*Seamen* 11(6).

N.Y.A.D. 1 Dept. 2003. Ship owner's obligation to provide maintenance and cure to a sick or injured seaman continues until the seaman recovers or until his condition is diagnosed as permanent and incurable, the point known as "maximum cure."—*Holley v. Transoceanic Cable Co.*, 753 N.Y.S.2d 477, 301 A.D.2d 417.—*Seamen* 11(6).

Tex.App.—Houston [14 Dist.] 1989. Seaman's right to maintenance and cure is implicit in contractual relationship between seaman and his employer; "maintenance" is per diem living allowance paid so long as seaman is outside hospital and has not

reached point of "maximum cure," which is achieved when it appears probable that further treatment will result in no improvement of seaman's condition, and "cure" involves payment of therapeutic, medical and hospital expenses not otherwise furnished to seaman and is also payable until point of maximum cure.—*Prude v. Western Seafood Co.*, 769 S.W.2d 663.—*Seamen* 11(1), 11(6).

Wash. 1997. Maintenance and cure is usually paid until "maximum cure" is achieved, that is, the seaman's condition becomes fixed and stable.—*Miller v. Arctic Alaska Fisheries Corp.*, 944 P.2d 1005, 133 Wash.2d 250, reconsideration denied, and reconsideration denied.—*Seamen* 11(6).

MAXIMUM ESTIMATED PRICE

Ill. 1927. Statute prohibiting purchase of school site at greater sum than "maximum estimated price" includes damages to land not taken in condemnation (School Law, § 127, subd. 5). School Law, § 127, subd. 5 (Smith-Hurd Rev. St. 1925, c. 122, § 136), providing that board of education shall in no case purchase a school site for a greater sum than "maximum estimated price," stated upon the ballot therefor, *held* to contemplate the inclusion of amount paid for damages in involuntary purchase by condemnation to land not taken in determining such sum.—*Trustees of Schools of Township 39 v. Berryman*, 155 N.E. 850, 325 Ill. 72.—*Schools* 65.

Ill. 1927. Statute prohibiting purchase of school site at greater sum than "maximum estimated price" includes damages to land not taken in condemnation. School Law, § 127, subd. 5, Smith-Hurd Stats. c. 122, § 136(5).—*Trustees of Schools of Township 39 v. Berryman*, 155 N.E. 850, 325 Ill. 72.—*Schools* 65.

MAXIMUM EXPOSED PERSON

Md.App. 1995. Evidence supported determination by a Maryland Department of Environment (MDE) that area residents failed to show nature and extent of any actual, prospective harm as a result of proposed "resource recovery facility" (RRF), which was a power generating solid waste incinerator, and thus, residents lacked standing to challenge issuance of air quality construction and refusal disposal permits by MDE; RRF would emit volatile organic compounds (VOC), lead, dioxins, mercury, and polychlorinated biphenyl (PCB) and arsenic, but other evidence indicated that probable emission would be insignificant or within acceptable limits established by national health and environmental agencies and that risk of cancer to "maximum exposed person" from RRF's air emission was less than one chance in a million, and none of residents lived within 2,000 feet from the site.—*Sugarloaf Citizens' Ass'n v. Department of Environment*, 653 A.2d 506, 103 Md.App. 269, certiorari granted 661 A.2d 733, 339 Md. 232, reversed 686 A.2d 605, 344 Md. 271, reconsideration denied 689 A.2d 58, 344 Md. 570.—*Admin Law* 668; *Environ Law* 656.

MAXIMUM EXTENT APPROPRIATE

S.D.Ind. 1996. The IDEA imposes presumption in favor of mainstreaming a disabled student, but applicable regulations do not contemplate that mainstreaming is required in every case, and mainstreaming to the "maximum extent appropriate" required by the IDEA does not mean the maximum extent feasible. Individuals with Disabilities Education Act, § 612(5)(B), as amended, 20 U.S.C.A. § 1412(5)(B).—*D.F. v. Western School Corp.*, 921 F.Supp. 559.—*Schools* 148(2.1).

MAXIMUM EXTENT PRACTICABLE

D.D.C. 1995. Pursuant to Endangered Species Act (ESA) section stating that Fish and Wildlife Service (FWS) "shall" to "maximum extent practicable," incorporate into recovery plan objective, measurable criteria which, when met, "would" result in determination that species be removed from list required that FWS, in designing objective, measurable criteria for grizzly bear recovery plan, address each of the five statutory delisting factors and measure whether threats to grizzly bear had been ameliorated; it was insufficient that recovery plan's criteria would "likely lead" to finding that statutory delisting factors were met. Endangered Species Act of 1973, § 4(a-c), (f)(1)(B)(ii), 16 U.S.C.A. § 1533(a-c), (f)(1)(B)(ii).—*Fund for Animals v. Babbitt*, 903 F.Supp. 96, opinion amended 967 F.Supp. 6.—*Environ Law* 528.

MAXIMUM FEASIBLE COMMUNITY PARTICIPATION

E.D.Pa. 1973. Requirement, under the Economic Opportunity Act, of "maximum feasible community participation" was broader than standard, under Model Cities Act, of "widespread participation" involved in different dispute and accordingly imposed stricter duty on defendant grantee and delegate agencies to seek community involvement in administration of health centers. Economic Opportunity Act of 1964, § 2 et seq., 42 U.S.C.A. § 2701 et seq.; Demonstration Cities and Metropolitan Development Act of 1966, § 103, 42 U.S.C.A. § 3303.—*Comprehensive Group Health Services Bd. of Directors v. Temple University of Com. System of Higher Ed.*, 363 F.Supp. 1069.—*U S* 82(4).

E.D.Pa. 1973. Requirement, under Economic Opportunity Act, of "maximum feasible community participation" forbids exclusion of representatives of the poor from any part of decision-making process which leads to a change in form of such community participation. Economic Opportunity Act of 1964, § 2 et seq., 42 U.S.C.A. § 2701 et seq.—*Comprehensive Group Health Services Bd. of Directors v. Temple University of Com. System of Higher Ed.*, 363 F.Supp. 1069.—*U S* 82(4).

MAXIMUM FUNDING

C.D.Ill. 1985. Provisions of consent decree, entered in school desegregation action, which required United States to use good-faith effort to find every available means of funding school desegregation plan did not entitle board to all or even close

to all available funds without regard to other grantees or policies, but rather, school board was entitled to receive its "equitable fair share," that amount which accounted for its enormous needs under consent decree against needs of other grantees and other interests, and "maximum funding," that is, most funding possible without causing undue harm to other grantees or crippling Secretary of Education's discretion.—*U.S. v. Board of Educ. of City of Chicago*, 621 F.Supp. 1296, vacated 799 F.2d 281.—*Fed Civ Proc* 2397.5.

MAXIMUM HEALING

Mont. 1990. Workers' compensation claimant had reached "maximum healing" from prior work-related injury before second injury occurred such that second injury was proximate cause of current disability; nearly two and one-half years lapsed between the two injuries and, although claimant reported occasional pain and other incidences of discomfort following first injury and received manipulative treatments, he continued to perform his normal work duties steadily until second injury, after which he missed approximately three months of work. *MCA* 39-71-703 et seq.—*Lee v. Group W Cable TCI of Montana*, 800 P.2d 702, 245 Mont. 292.—*Work Comp* 598.

Mont. 1987. "Maximum healing" for purposes of workers' compensation means that following a compensable injury a claimant has reached a point constituting the end of a healing period; it does not mean that the person is free of symptoms such as pain or objective signs.—*Stangler v. Anderson Meyers Drilling Co.*, 746 P.2d 99, 229 Mont. 251.—*Work Comp* 866.

MAXIMUM HOURS OF WORK

Minn. 1954. Provision for compulsory arbitration of "maximum hours of work", "minimum hourly wage rates" in labor relations covers matters relating to daily hours of work, work days per week, days of sick leave, holidays and vacation days, health and welfare matters and other issues bearing most directly upon employees' welfare but would not extend to issues of union shop or security or questions involving internal management upon the employer.—*Fairview Hospital Ass'n v. Public Bldg. Service and Hospital and Institutional Emp. Union Local No. 113 A. F. L.*, 64 N.W.2d 16, 241 Minn. 523.—*Labor* 412.1.

MAXIMUM IMPROVEMENT

Ga.App. 1957. The term "maximum improvement" in finding is a mere phrase sometimes employed in expressing an opinion as to whether according to the proof adduced, the workmen's compensation claimant's disability is temporary or permanent.—*Borden Co. v. Fuerlinger*, 98 S.E.2d 410, 95 Ga.App. 556.—*Work Comp* 1761.

MAXIMUM INJURY RULE

Mo.App. W.D. 1993. "Maximum injury rule" requires jury to act upon presumption that condemnor will make most injurious use of its rights.—*City of Kansas City v. Habelitz*, 857 S.W.2d 299, rehear-

ing, transfer denied, and transfer denied.—*Em Dom* 200.

Mo.App. W.D. 1992. "Maximum injury rule" requires the jury to act upon the presumption that condemnor will make the most injurious use of its rights.—*State ex rel. Missouri Highway & Transp. Com'n v. Cowger*, 838 S.W.2d 144, rehearing, transfer denied, and transfer denied.—*Em Dom* 200.

MAXIMUM LAWFUL PRICES

C.A.D.C. 1989. Prepayments made by natural gas pipeline operators to producers, to the extent such payments represented gas that was not actually taken, were not required to be considered in determining "maximum lawful prices" for first sales of natural gas which operators were permitted to pay under Natural Gas Policy Act. Natural Gas Policy Act of 1978, §§ 2-123, 504(a), 601(b), 15 U.S.C.A. §§ 3301-3333, 3414(a), 3431(b).—*Associated Gas Distributors v. F.E.R.C.*, 893 F.2d 349, 282 U.S.App.D.C. 142, rehearing denied 898 F.2d 809, 283 U.S.App.D.C. 212, certiorari denied *Berkshire Gas Co. v. Associated Gas Distributors*, 111 S.Ct. 277, 498 U.S. 907, 112 L.Ed.2d 232, certiorari denied *Tennessee Small General Service Customer Group v. Associated Gas Distributors*, 111 S.Ct. 277, 498 U.S. 907, 112 L.Ed.2d 233, certiorari denied *Tennessee Gas Pipeline Co. v. Associated Gas Distributors*, 111 S.Ct. 278, 498 U.S. 907, 112 L.Ed.—*Gas* 14.1(1).

Em.App. 1945. "Maximum lawful prices", as used in section of Emergency Price Control Act defining "maximum price", refers to those prices which are lawful under the act, and does not preclude Price Administrator from establishing maximum prices for unlawful sales. Emergency Price Control Act of 1942, § 302(i), 50 U.S.C.A. Appendix § 942(i).—*Barnett v. Bowles*, 151 F.2d 77, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462, certiorari denied *Spies v. Bowles*, 66 S.Ct. 176, 326 U.S. 771, 90 L.Ed. 465.—*War* 108.

MAXIMUM LOSS

Pa.Super. 1995. Where "other insurance" provisions of two automobile liability insurance policies covering same loss are irreconcilable and thus mutually repugnant, the loss is apportioned between the insurers under "maximum loss" rule, which prorates loss equally up to limit of liability of policy with the lower limit, even if the "other insurance" provisions both contain language providing for apportionment according to proportion borne by policy's limit of liability to total of all applicable limits; irreconcilable "other insurance" provisions are to be rejected in toto.—*Hoffmaster v. Harleysville Ins. Co.*, 657 A.2d 1274, 441 Pa.Super. 490, appeal denied 668 A.2d 1133, 542 Pa. 670.—*Insurance* 2762(4).

Wash.App. Div. 3 1990. Under "maximum loss" rule of apportionment, loss is shared equally among insurers until limits of smaller policy are exhausted; any remaining portion of loss is to be paid from larger policy up to its limits or until full compensation for loss is made.—*Odessa School Dist. No. 105 v. Insurance Co. of America*, 791 P.2d 237, 57

Wash.App. 893, review granted 797 P.2d 512, 115 Wash.2d 1007, cause dismissed 804 P.2d 9, 115 Wash.2d 1022.—Insurance 2112.

MAXIMUM LOSS METHOD

Wash.App. Div. 1 1984. Under "maximum loss method" of apportioning loss between primary insurers, the loss is prorated based upon the maximum loss which each insurer standing alone would incur for the particular occurrence.—Mission Ins. Co. v. Guarantee Ins. Co., 683 P.2d 215, 37 Wash. App. 695.—Insurance 2112.

MAXIMUM LOSS RULE

Wash.App. Div. 3 1994. Under "maximum loss rule," each concurrent primary insurer is required to contribute equally until limits of smaller policy are exhausted with remaining portion of loss being paid from larger policy up to its limits.—Perez Trucking, Inc. v. Ryder Truck Rental, Inc., 886 P.2d 196, 76 Wash.App. 223.—Insurance 2762(4).

MAXIMUM MEDICAL CURE

E.D.N.Y. 1995. "Maximum medical cure" is reached when seaman recovers from injury, the condition permanently stabilizes or cannot be improved further.—McMillan v. Tug Jane A. Bouchard, 885 F.Supp. 452.—Seamen 11(6).

La.App. 1 Cir. 1993. "Maximum cure," also known as "maximum medical recovery," is achieved when it is probable that further treatment will result in no betterment of seaman's condition, for purposes of determining whether seaman's employer must pay maintenance and cure; when it appears that condition is incurable or that further treatment will merely relieve pain and suffering and will not otherwise improve physical condition, it is proper to declare point of "maximum medical cure."—Jordan v. Intercontinental Bulk Tank Corp., 621 So.2d 1141, writ denied 623 So.2d 1335, writ denied 623 So.2d 1336, reconsideration denied 625 So.2d 1026, certiorari denied 114 S.Ct. 926, 510 U.S. 1094, 127 L.Ed.2d 219.—Seamen 11(6).

MAXIMUM MEDICAL IMPROVEMENT

S.D.Fla. 1996. Seaman's entitlement to maintenance and cure continues to the point of "maximum medical improvement," when there is no possibility of betterment in the seaman's physical "condition"; point of maximum medical improvement is not reached when seaman's underlying disease is established to be incurable, when further improvement in seaman's "condition" is possible.—Costa Crociere, S.p.A. v. Rose, 939 F.Supp. 1538.—Seamen 11(6).

S.D.Fla. 1996. When available treatment leaves seaman feeling better without enhancing his bodily function and moving him to an improved state of health, then point of "maximum medical improvement" has been reached, and shipowner's liability for maintenance and cure may be extinguished.—Costa Crociere, S.p.A. v. Rose, 939 F.Supp. 1538.—Seamen 11(6).

Colo. 1989. "Maximum medical improvement," for purposes of workers' compensation, exists when the underlying condition of the worker has stabilized to the extent that no further medical treatment will improve the worker's condition.—Allee v. Contractors, Inc., 783 P.2d 273.—Work Comp 854.

Colo.App. 2002. For workers' compensation purposes, "maximum medical improvement" (MMI) is defined as that point in time when any medically determinable physical or medical impairment as a result of injury has become stable and when no further treatment is reasonably expected to improve the condition. West's C.R.S.A. § 8-40-201(11.5).—MGM Supply Co. v. Industrial Claim Appeals Office of State of Colo., 62 P.3d 1001, rehearing denied, and certiorari denied.—Work Comp 868.

Colo.App. 1990. "Maximum medical improvement" exists when underlying condition causing disability has become stable and nothing further in way of treatment will improve that condition.—Reynolds v. Industrial Claim Appeals Office of State of Colo., 794 P.2d 1080.—Work Comp 839.

Fla.App. 1 Dist. 1995. "Maximum medical improvement" marks date at which recovery or lasting improvement from injury can no longer be anticipated; determination of maximum medical improvement is essentially medical question.—Florida Power Corp. v. Hamilton, 657 So.2d 1260.—Work Comp 868.

Fla.App. 1 Dist. 1993. "Maximum medical improvement" (MMI) for workers' compensation purposes is date after which no recovery or improvement can be reasonably anticipated.—Hewett v. Town of Mayo, 614 So.2d 598.—Work Comp 865.

Fla.App. 1 Dist. 1991. For workers' compensation purposes, date of "maximum medical improvement" (MMI) marks point at which no further recovery or improvement from injury or disease can reasonably be anticipated; there is no basis for setting MMI date while healing process is still continuing.—Keller Kitchen Cabinets v. Holder, 586 So.2d 1132, certification granted, quashed 610 So.2d 1264.—Work Comp 868.

Fla.App. 1 Dist. 1989. Finding that worker has not attained maximum medical improvement clearly is not finding that worker is disabled, and terms "maximum medical improvement" and "total temporary disability" are not synonymous, as the former means date after which further recovery can no longer reasonably be anticipated, and the latter means that healing period of time, during which employee is, by reason of injury, totally disabled and unable to work. West's F.S.A. § 440.02(22).—Christian v. Greater Miami Academy, 541 So.2d 701.—Work Comp 839.

Fla.App. 1 Dist. 1988. For purpose of deciding when workers' compensation claimant has reached "maximum medical improvement," and thus has become eligible for permanent disability benefits, "maximum medical improvement" is date after which recovery or lasting improvement can no longer be reasonably anticipated.—Aino's Custom Slip

Covers v. DeLucia, 533 So.2d 862, review denied 544 So.2d 199.—Work Comp 866.

Fla.App. 1 Dist. 1987. Date of “maximum medical improvement” marks the point after which no further recovery or improvement from an injury or disease can be reasonably anticipated.—Stewart v. Resort Inns of America, 513 So.2d 1334.—Work Comp 868.

Fla.App. 1 Dist. 1984. “Maximum medical improvement” is date after which recovery or lasting improvement can no longer reasonably be anticipated.—Lewis v. Town & Country Auto Body Shop, 447 So.2d 403, appeal after remand 473 So.2d 803.—Work Comp 865.

Fla.App. 1 Dist. 1979. “Maximum medical improvement” signifies date after which a claimant is not expected to recover substantially from his accidentally induced medical problem.—Morrison Merchandising Corp. v. Rambeau, 377 So.2d 234, certiorari denied 386 So.2d 640.—Work Comp 868.

Ky. 2001. Awards of temporary total disability are appropriate when a worker is totally disabled by the effects of a compensable injury but has not yet reached “maximum medical improvement” (MMI), a term that refers to the time at which the worker’s medical condition has stabilized so that any remaining physical impairment and occupational disability can be viewed as being permanent.—Clemco Fabricators v. Becker, 62 S.W.3d 396.—Work Comp 854.

Md. 1995. For purposes of determining claimant’s entitlement to permanent disability benefits under workers’ compensation law, “maximum medical improvement” is stage at which claimants have reached point of stability in their disease and they have benefited maximally from their interventional medical care.—Sears, Roebuck and Co., Inc. v. Ralph, 666 A.2d 1239, 340 Md. 304.—Work Comp 868.

Md.App. 1994. “Maximum medical improvement,” for purposes of determining at what point permanent disability benefits are to be awarded, is reached when injured employee is at point of stability and has received the maximum benefit of intervention medical care; when employee has reached maximum medical improvement, physician can then evaluate nature and extent of impairment to determine industrial loss of use of employee’s body.—Ralph v. Sears Roebuck & Co., 649 A.2d 1179, 102 Md.App. 387, certiorari granted 656 A.2d 794, 338 Md. 160, affirmed 666 A.2d 1239, 340 Md. 304.—Work Comp 868.

Minn. 1989. Whether workers’ compensation claimant has reached “maximum medical improvement”, within meaning of statutes providing for cessation of temporary total disability compensation, is “issue of ultimate fact” to be decided by compensation judge after considering medical opinions, records and other data and circumstances and is not to be decided by medical profession; “medical probability”, within meaning of statute defining “maximum medical improvement” does not mean only opinion of physician. M.S.A. §§ 176.011, subd. 25, 176.101, subd. 3e(a).—Hammer v. Mark

MAXIMUM MEDICAL IMPROVEMENT

Hagen Plumbing & Heating, 435 N.W.2d 525.—Work Comp 1939.11(9).

N.C.App. 2001. For purposes of determining the limits of a workers’ compensation claimant’s claims for temporary disability benefits, “maximum medical improvement” occurs when the employee has either completely recovered from her injuries or her injuries have stabilized. G.S. § 97-31.—Anderson v. Gulistan Carpet, Inc., 550 S.E.2d 237, 144 N.C.App. 661.—Work Comp 868.

N.C.App. 2000. “Maximum medical improvement” from work-related injury is reached when the impaired bodily condition is stabilized or determined to be permanent.—Royce v. Rushco Food Stores, Inc., 533 S.E.2d 284, 139 N.C.App. 322.—Work Comp 868.

N.C.App. 2000. In the workers’ compensation context, “maximum medical improvement” is the point at which the injury has stabilized.—Aderholt v. A.M. Castle Co., 529 S.E.2d 474, 137 N.C.App. 718, review denied 544 S.E.2d 546, 352 N.C. 356.—Work Comp 868.

Ohio 1994. “Maximum medical improvement,” for purposes of temporary total disability (TTD) compensation, is equatable with concept of permanence and relates solely to perceived longevity of condition at issue, and not to claimant’s ability to perform tasks involved in his former position of employment; it is defined as condition which will, with reasonable probability, continue for indefinite period of time without any present indication of recovery therefrom. Ohio Admin.Code § 4121-3-32(A)(1); R.C. § 4123.56(A).—State ex rel. Eberhardt v. Flxible Corp., 640 N.E.2d 815, 70 Ohio St.3d 649, reconsideration denied 642 N.E.2d 637, 71 Ohio St.3d 1430.—Work Comp 854.

S.C.App. 2002. “Maximum medical improvement” (MMI) is term used to indicate that workers’ compensation claimant has reached such plateau that in physician’s opinion there is no further medical care or treatment which will lessen degree of impairment.—Lee v. Harborside Cafe, 564 S.E.2d 354, 350 S.C. 74, rehearing denied, and certiorari denied.—Work Comp 868.

S.C.App. 1997. In workers’ compensation context, “maximum medical improvement” is used to indicate that claimant has reached such plateau that, in physician’s opinion, there is no further medical care or treatment which will lessen degree of impairment.—Pearson v. JPS Converter & Indus. Corp., 489 S.E.2d 219, 327 S.C. 393, rehearing denied, and certiorari denied.—Work Comp 868.

S.C.App. 1995. “Maximum medical improvement,” (MMI) after which temporary total disability benefits cease and claimant receives permanent partial disability if warranted, indicates that employee has reached such plateau that, in physician’s opinion, there is no further medical care or treatment which will lessen degree of impairment. S.C. Code Regs. 67-507(C)(3)(a).—O’Banner v. Westinghouse Elec. Corp., 459 S.E.2d 324, 319 S.C. 24.—Work Comp 868.

Tex. 1999. Doctor will not certify an impairment rating until a workers' compensation claimant reaches "maximum medical improvement," which is the point at which the employee's injury will not materially improve with additional rest or treatment. V.T.C.A., Labor Code § 408.121.—Rodriguez v. Service Lloyds Ins. Co., 997 S.W.2d 248.—Work Comp 868.

Tex. 1999. Date of "maximum medical improvement," when a doctor can certify workers' compensation claimant's impairment rating, is fixed when an examining doctor certifies that no further material recovery or lasting improvement can reasonably be anticipated. V.T.C.A., Labor Code §§ 401.011(30), 408.123.—Rodriguez v. Service Lloyds Ins. Co., 997 S.W.2d 248.—Work Comp 868.

Va.App. 1988. Evidence failed to support Industrial Commission's finding that claimant was entitled to workers' compensation permanent disability benefits because claimant's injured eye had reached "maximum medical improvement" where none of medical reports in evidence indicated that claimant's eye had reached maximum medical improvement, and where doctor testified at trial that he felt that claimant's vision had stabilized, but admitted that he was speculating since he had not examined injured eye in nearly a year. Code 1950, § 65.1-56.—Kirk Plastering Co. v. Netherwood, 372 S.E.2d 192, 7 Va.App. 177.—Work Comp 1632.

MAXIMUM MEDICAL IMPROVEMENT (MMI)

S.C.App. 1997. "Maximum medical improvement (MMI)" is term used in workers' compensation proceeding to indicate that person has reached such plateau that in physician's opinion there is no further medical care or treatment which will lessen degree of impairment.—Smith v. South Carolina Dept. of Mental Health, 494 S.E.2d 630, 329 S.C. 485, rehearing denied, and certiorari granted, affirmed 517 S.E.2d 694, 335 S.C. 396, rehearing denied.—Work Comp 868.

MAXIMUM MEDICAL IMPROVEMENT (MMI) TEST

Ohio App. 10 Dist. 1991. Under the "maximum medical improvement (MMI) test" for purposes of temporary total disability compensation, temporary total benefits will be paid during healing and treatment period for condition until claimant has reached some certain level of stabilization, when the stabilization has been reached and no further improvement is probable, condition is permanent and claimant can seek compensation for types of permanent disability, including permanent partial disability compensation for partial impairment of earning capacity, and permanent total disability compensation for total impairment of earning capacity.—State ex rel. Matlack, Inc. v. Indus. Comm., 598 N.E.2d 121, 73 Ohio App.3d 648, dismissed, jurisdictional motion overruled 579 N.E.2d 1392, 62 Ohio St.3d 1453.—Work Comp 868.

MAXIMUM MEDICAL RECOVERY

La.App. 1 Cir. 1993. Maintenance and cure is designed to provide seaman with food and lodging

when he becomes sick or injured and extends during period when he is incapacitated to do seaman's work and continues until he reaches "maximum medical recovery"; ambiguities or doubts in application of law of maintenance and cure are resolved in favor of the seaman.—Jordan v. Intercontinental Bulk Tank Corp., 621 So.2d 1141, writ denied 623 So.2d 1335, writ denied 623 So.2d 1336, reconsideration denied 625 So.2d 1026, certiorari denied 114 S.Ct. 926, 510 U.S. 1094, 127 L.Ed.2d 219.—Seamen 11(1), 11(6).

La.App. 1 Cir. 1993. "Maximum cure," also known as "maximum medical recovery," is achieved when it is probable that further treatment will result in no betterment of seaman's condition, for purposes of determining whether seaman's employer must pay maintenance and cure; when it appears that condition is incurable or that further treatment will merely relieve pain and suffering and will not otherwise improve physical condition, it is proper to declare point of "maximum medical cure."—Jordan v. Intercontinental Bulk Tank Corp., 621 So.2d 1141, writ denied 623 So.2d 1335, writ denied 623 So.2d 1336, reconsideration denied 625 So.2d 1026, certiorari denied 114 S.Ct. 926, 510 U.S. 1094, 127 L.Ed.2d 219.—Seamen 11(6).

La.App. 5 Cir. 1997. Maintenance and cure extends only to the time injured seaman reaches "maximum medical recovery" which is achieved when it appears probable that further treatment will result in no betterment of seaman's condition; thus, where it appears that seaman's condition is incurable, or that future medical treatment will merely relieve pain and suffering but not otherwise improve seaman's physical condition, it is proper to declare that the point of maximum cure has been achieved.—Murphy v. L&L Marine Transp., Inc., 695 So.2d 1045, 97-33 (La.App. 5 Cir. 5/28/97).—Seamen 11(6).

Mich.App. 1995. For purposes of maintenance and cure claim, "maximum medical recovery" means until sick or injured seaman has been cured or incapacity has been declared to be of permanent character. (Per White, P.J., with one Judge concurring in part and dissenting in part.)—Said v. Rouge Steel Co., 530 N.W.2d 765, 209 Mich.App. 150.—Seamen 11(6).

Miss. 1959. In Supreme Court opinion in workmen's compensation case, the word "cured" was used as a general synonym for the phrase, "maximum medical recovery."—Komp Equipment Co. v. Clinton, 112 So.2d 541, 236 Miss. 560.—Courts 107.

MAXIMUM OCCUPANCY LIMITATION

C.A.11 (Ga.) 1992. City zoning ordinance permitting maximum of four unrelated individuals to occupy single residence imposed "maximum occupancy limitation" within meaning of exemption to Fair Housing Act for ordinances regarding "maximum number of occupants" permitted to occupy a dwelling, although ordinance placed no limit on number of family members who could reside together. Civil Rights Act of 1968, §§ 807, 807(b)(1), as amended, 42 U.S.C.A. §§ 3607,

3607(b)(1).—*Elliott v. City of Athens, Ga.*, 960 F.2d 975, certiorari denied 113 S.Ct. 376, 506 U.S. 940, 121 L.Ed.2d 287.—Civil R 131.

E.D.Va. 1993. City's unrelated persons restriction was not "maximum occupancy limitation," within meaning of Fair Housing Act, so as to be within exemption for reasonable local, state, or federal restrictions regarding maximum number of occupants permitted to occupy dwelling; "maximum occupancy limitations" are permissible under Fair Housing Act only if applied to all occupants, without qualification. Civil Rights Act of 1968, § 807(b)(1), as amended, 42 U.S.C.A. § 3607(b)(1).—*Oxford House, Inc. v. City of Virginia Beach, Va.*, 825 F.Supp. 1251.—Civil R 131.

MAXIMUM OCCUPANCY LIMITATIONS

D.Conn. 2001. Provisions of city's zoning regulations and property maintenance and building codes which limited the number of unrelated people who could live together in a dwelling rather than limiting the total number of occupants who could live in a dwelling were "land use restrictions," not "maximum occupancy limitations," and therefore did not qualify for the exemption from coverage under the Fair Housing Act (FHA) for reasonable restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Civil Rights Act of 1968, § 807(b)(1), as amended, 42 U.S.C.A. § 3607(b)(1).—*Tsombanidis v. City of West Haven*, 180 F.Supp.2d 262.—Civil R 131.

MAXIMUM OCCUPANCY RESTRICTIONS

U.S.Wash. 1995. "Maximum occupancy restrictions" cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms; these restrictions ordinarily apply uniformly to all residents of all dwelling units and are intended to protect health and safety by preventing dwelling overcrowding.—*City of Edmonds v. Oxford House, Inc.*, 115 S.Ct. 1776, 514 U.S. 725, 131 L.Ed.2d 801.—Zoning 66.

MAXIMUM PENALTY

La. 1981. For purposes of determining whether defendant is entitled to trial by jury, "maximum penalty" is computed by aggregating penalties which may be imposed upon conviction of each count of single indictment or bill of information brought before the court in a single trial or proceeding. LSA-Const.Art. 1, § 17.—*State v. Comeaux*, 408 So.2d 1099.—Jury 22(1).

Ohio 1988. Under rule governing acceptance of guilty pleas, the term "maximum penalty" referred to a single penalty, for the single crime for which the plea was offered, and thus rule did not require that the court inform a defendant pleading guilty to more than one offense that it could order him to serve any sentences imposed consecutively, rather than concurrently. Rules Crim.Proc., Rule 11(C), (C)(2)(a).—*State v. Johnson*, 532 N.E.2d 1295, 40 Ohio St.3d 130, certiorari denied 109 S.Ct. 1574, 489 U.S. 1098, 103 L.Ed.2d 940.—Crim Law 273.1(4).

MAXIMUM PERCENTUM OF WAGES

La.App. 1 Cir. 1948. The words "maximum percentum of wages" as used in provision of compensation act that unless petition alleges that employer has refused to pay the maximum percentum of wages to which petitioner is entitled, presentation or filing of petition is premature, means maximum amount of compensation to which employee is entitled so that where injured employee fails to allege that employer has not paid him compensation since accident causing his injury or that employer refused to pay, suit is premature and should be dismissed. Act No. 20 of 1914, § 18, subd. 1(B), as amended by Act No. 85 of 1926, LSA-R.S. 23:1314.—*Thomas v. Oxendine*, 33 So.2d 770.—Work Comp 1168.

MAXIMUM PER CENTUM OF WAGES TO WHICH PETITIONER IS ENTITLED

La.App. 2 Cir. 1931. "Maximum per centum of wages to which petitioner is entitled" means maximum percentage definitely fixed by compensation statute for particular injuries. Act No. 85 of 1926, p. 120, § 18, subd. 1, pars. A, B, Act No. 242 of 1928, p. 362, LSA-R.S. 23:1021, 23:1201 et seq., 23:1311, 23:1314.—*Thibeau v. Dutton & Mercer*, 136 So. 186, 17 La.App. 338.—Work Comp 869.

MAXIMUM PERIOD

Wis.App. 1988. Term "maximum period," within meaning of statute requiring computation of maximum period of commitment for defendant found not guilty by reason of mental disease or defect on more than one criminal offense, was equivalent to maximum consecutive terms, rather than maximum concurrent terms. W.S.A. 971.14, 971.17(4).—*State v. C.A.J.*, 434 N.W.2d 800, 148 Wis.2d 137, review denied 439 N.W.2d 142.—Mental H 440.

MAXIMUM POPULATION DEVIATION

D.Kan. 1992. "Maximum population deviation," for purposes of Election Redistricting Act, is difference in population between largest and smallest districts divided by ideal district population.—*State of Kan. ex rel. Stephan v. Graves*, 796 F.Supp. 468.—Elections 12(6).

MAXIMUM POSSIBLE SENTENCE

Wash.App. Div. 2 1994. Term "maximum possible sentence" in statute, providing for commitment of defendant acquitted of crime charged by reason of insanity, was not ambiguous, although not defined in statute; according to ordinary dictionary meaning, such language meant longest sentence authorized by law for offense at time of charging and defendant cited no contrary legislative intent. West's RCWA 10.77.020(3).—*State v. Sunich*, 884 P.2d 1, 76 Wash.App. 202.—Mental H 439.1.

MAXIMUM POTENTIAL LIABILITY

Wis.App. 1988. For purposes of freeing insurer from duty to defend, "maximum potential liability" cannot be equated with maximum policy limits; thus, duty to defend exists even though insurer

tenders its maximum potential liability.—*St. John's Home of Milwaukee v. Continental Cas. Co.*, 434 N.W.2d 112, 147 Wis.2d 764, review dismissed 436 N.W.2d 32, 147 Wis.2d 893, order vacated on reconsideration 441 N.W.2d 219, 150 Wis.2d 37, review denied 446 N.W.2d 285.—Insurance 2930.

MAXIMUM PRICE

Em.App. 1945. "Maximum lawful prices", as used in section of Emergency Price Control Act defining "maximum price", refers to those prices which are lawful under the act, and does not preclude Price Administrator from establishing maximum prices for unlawful sales. Emergency Price Control Act of 1942, § 302(i), 50 U.S.C.A. Appendix § 942(i).—*Barnett v. Bowles*, 151 F.2d 77, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462, certiorari denied *Spiers v. Bowles*, 66 S.Ct. 176, 326 U.S. 771, 90 L.Ed. 465.—War 108.

MAXIMUM PROBABLE POTENTIAL

Cal.App. 2 Dist. 1999. Under "maximum probable potential" standard for setting aside amounts as reserves for workers' compensation claims, the adjuster reserves for the absolute most insurer may have to pay without any exercise of discretion or judgment as to the realistic value of each claim; the greater the claim reserves, the greater the insured's loss history, which in large part determines the insured's experience modification factor, which in turn is used by insurer to calculate the insured's premium.—*Notrica v. State Compensation Ins. Fund*, 83 Cal.Rptr.2d 89, 70 Cal.App.4th 911, rehearing denied, and review denied.—Work Comp 1045.

MAXIMUM PUNISHMENT

Md.App. 1994. Phrase "maximum punishment," as used in sentencing statute providing that maximum punishment for drug conspiracy could not exceed that of target offense, did not include no-parole provision applicable to target offense; unless expressly provided by statute, sentencing court had no discretion to limit defendant's eligibility for parole. Code 1957, Art. 27, §§ 286(a)(1), (f)(3), 290.—*DeLeon v. State*, 648 A.2d 1053, 102 Md.App. 58.—Conspr 51.

MAXIMUM QUANTITY OF

Cal. 1903. A grant by an irrigation ditch company to a lumber company of a right of way for a flume across the grantor's ditch provided that the crossing should be made in such a way as not to stop or impede the flow of "all" the water which the ditch might or could carry. In construing the term "all" as used in this grant, the court says that it is used to signify the "maximum quantity of"; that it was not in contemplation that every drop of running water should be absolutely stopped or absolutely impeded, but that there should be no stoppage or impediment to the maximum quantity of water which the ditch was capable of carrying, so that the grant was with a proviso that the crossing should not impede the maximum quantity, and not that it should not impede the flow of all the water

in the ditch.—*Centerville & Kingsburg Irr. Ditch Co. v. Sanger LumberCo.*, 73 P. 1079, 140 Cal. 385.

MAXIMUM RATE

N.Y.A.D. 3 Dept. 1907. The term "maximum rate," as used in a statute authorizing the fixing of a "maximum rate" to be charged for gas and electricity, means a "reasonable rate with permission to the party furnishing the service to do business at an inadequate profit or at a loss, if he desires."—*Trustees of Village of Saratoga Springs v. Saratoga Gas, Electric Light & Power Co.*, 107 N.Y.S. 341, 122 A.D. 203, reversed 83 N.E. 693, 191 N.Y. 123, 18 L.R.A.N.S. 713, 14 Am. Ann. Cas. 606.

MAXIMUM RATES

Mich. 1897. The term "maximum rates," in Const. art. 19a, § 1, empowering the Legislature to pass laws establishing reasonable maximum rates and charges for the transportation of passengers on railroads, means the maximum rate which the company is to be permitted to charge under a given state of circumstances. The Legislature is authorized, in addition to establishing a maximum rate for a single fare, to establish a rate at which mileage books shall be established.—*Smith v. Lake Shore & M.S. Ry. Co.*, 72 N.W. 328, 114 Mich. 460, reversed 19 S.Ct. 565, 173 U.S. 684, 43 L.Ed. 858.

MAXIMUM RECOVERY

Conn. 1994. Under workers' compensation law, "maximum recovery" is reached when there is no reasonable prognosis for further recovery, whether worker has recovered fully from his injury or has recovered only partially but will never fully recover.—*Mulligan v. F.S. Elec.*, 651 A.2d 254, 231 Conn. 529.—Work Comp 868.

MAXIMUM RECOVERY RULE

C.A.Fed. (Colo.) 1996. Under "maximum recovery rule," appellate court which holds that jury damage award is excessive and gives plaintiff option of agreeing to remittitur is to remit damage award to highest amount jury could properly have awarded based on relevant evidence.—*Oiness v. Walgreen Co.*, 88 F.3d 1025, rehearing denied, in banc suggestion declined, certiorari denied 117 S.Ct. 951, 519 U.S. 1112, 136 L.Ed.2d 838.—Fed Cts 945.

C.A.Fed. (S.C.) 2001. Court of Appeals for the Federal Circuit, like the Fourth Circuit, has a "maximum recovery rule," which remits an excessive jury award to the highest amount the jury could properly have awarded based on the relevant evidence, and the court then allows a plaintiff the option of a new trial on damages or the remitted damages award.—*Shockley v. Arcan, Inc.*, 248 F.3d 1349, rehearing and rehearing denied.—Fed Cts 945.

C.A.7 (Ill.) 2000. The "maximum recovery rule" directs that, in ordering remittitur, the court set an amount based on the highest amount of damages that the jury could properly have awarded based on the relevant evidence.—*Jabat, Inc. v. Smith*, 201 F.3d 852.—Fed Civ Proc 2377.

C.A.5 (La.) 1994. If award is disproportionate to injury, remittitur will be ordered in accordance with "maximum recovery rule," which requires that award be reduced to maximum amount jury could properly have awarded.—*Randall v. Chevron U.S.A., Inc.*, 13 F.3d 888, opinion modified on denial of rehearing 22 F.3d 568, certiorari dismissed *Sea Savage, Inc. v. Chevron U.S.A., Inc.*, 115 S.Ct. 5, 512 U.S. 1265, 129 L.Ed.2d 906, certiorari denied 115 S.Ct. 498, 513 U.S. 994, 130 L.Ed.2d 408, certiorari denied 115 S.Ct. 498, 513 U.S. 994, 130 L.Ed.2d 408.—Fed Civ Proc 2377.

C.A.5 (La.) 1985. Court of Appeals is required to determine maximum award which evidence would support or to remand to trial court; "maximum recovery rule" permits court to reduce verdict to maximum amount jury could properly have awarded.—*Springborn v. American Commercial Barge Lines, Inc.*, 767 F.2d 89.—Fed Cts 945.

C.A.5 (La.) 1983. Court of Appeals determines size of remittitur in accordance with circuit's "maximum recovery rule," which prescribes that verdict must be reduced to maximum amount jury could properly have awarded.—*Caldarera v. Eastern Airlines, Inc.*, 705 F.2d 778.—Fed Cts 92.

C.A.5 (Miss.) 1995. Appellate court's power to grant remittitur is same as district court's, i.e., appellate court determines size of remittitur in accordance with "maximum recovery rule" by reducing verdict to maximum amount jury could properly have awarded.—*Eiland v. Westinghouse Elec. Corp.*, 58 F.3d 176.—Fed Cts 945.

C.A.5 (Tex.) 2002. Pursuant to the so-called "maximum recovery rule," the Court of Appeals remits damage awards that it finds excessive to the maximum amount the jury could have awarded.—*Salinas v. O'Neill*, 286 F.3d 827, rehearing and rehearing denied 37 Fed.Appx. 715.—Fed Cts 873.

C.A.5 (Tex.) 2002. Judge-made "maximum recovery rule," which is applied in determining whether a remittitur is in order, essentially provides that court will decline to reduce damages where the amount awarded is not disproportionate to at least one factually similar case from the relevant jurisdiction.—*Lebron v. U.S.*, 279 F.3d 321.—Fed Civ Proc 2377.

C.A.5 (Tex.) 2001. Court reducing jury's excessive damage award follows "maximum recovery rule," under which damages are reduced to maximum amount reasonable jury could have awarded.—*Giles v. General Elec. Co.*, 245 F.3d 474.—Fed Cts 929.

C.A.5 (Tex.) 1992. If Court of Appeals determines that remittitur is appropriate, it decides the amount of the remittitur in accordance with "maximum recovery rule" mandating that jury's verdict be reduced to the maximum amount jury could properly have awarded.—*Wellborn v. Sears, Roebuck & Co.*, 970 F.2d 1420.—Fed Cts 929.

C.A.5 (Tex.) 1990. "Maximum recovery rule" is judge-made rule which provides that reviewing court will decline to reduce damages where amount awarded is not disproportionate to at least one

factually similar case from relevant jurisdiction.—*Douglass v. Delta Air Lines, Inc.*, 897 F.2d 1336, application not considered *Salinas v. O'Neill*, 286 F.3d 827, rehearing and rehearing denied 37 Fed.Appx. 715.—Fed Cts 873.

C.A.5 (Tex.) 1986. Power of Court of Appeals to grant a remittitur is the same as that of the district court; amount of remittitur is determined according to "maximum recovery rule," which provides that verdict will be reduced to maximum amount jury properly could have awarded.—*Enterprise Refining Co. v. Sector Refining, Inc.*, 781 F.2d 1116.—Fed Cts 945.

S.D.Miss. 2000. The size of the remittitur must be in accordance with the Fifth Circuit's "maximum recovery rule," which prescribes that the verdict will be reduced, if necessary, to the maximum amount the jury could properly have awarded.—*Whitehead ex rel. Whitehead v. K Mart Corp.*, 173 F.Supp.2d 553.—Fed Civ Proc 2377.

D.N.H. 2001. Under the so-called "maximum recovery rule," the court may calculate the highest award supported by the evidence, and offer the prevailing party the option to accept damages in that amount or take his chances on a new trial in the hope that a second jury might return a verdict for a higher amount.—*Howard v. Antilla*, 160 F.Supp.2d 169, vacated 294 F.3d 244.—Fed Civ Proc 2377.

MAXIMUM RENT CEILING

D.C.Mun.App. 1944. A general order of Administrator of Rent Control requiring landlords to file petitions for determination of maximum rent ceilings, and reciting that, until further notice, Administrator will assume, but not concede, that first rent collected by landlord is fair and reasonable, was not an adoption of rent then charged as a "maximum rent ceiling", and landlord's petition for court review of adjustment of rent or service on basis of such order was properly dismissed. D.C.Code 1940, §§ 45-1602, 45-1604, 45-1607 to 45-1609, 45-1602(1)(a-c).—*Sager v. Stamps*, 38 A.2d 113.—Land & Ten 200.69.

MAXIMUM RENT DATE

Em.App. 1943. The "maximum rent date" method of rent control under the Emergency Price Control Act, preserves differentials in rent resulting from fact that, in a normal competitive market, each landlord presumably pursues the rental policy which in his judgment is the most economically advantageous to him. Emergency Price Control Act of 1942, § 2(b), 50 U.S.C.A.Appendix, § 902(b).—*Northwood Apartments v. Brown*, 137 F.2d 809.—War 209.

Em.App. 1943. Under Emergency Price Control Act, the "maximum rent date" method of rent stabilization is authorized.—*Hillcrest Terrace Corporation v. Brown*, 137 F.2d 663.

Em.App. 1943. Under the Emergency Price Control Act, the "maximum rent date" method of rent control is authorized.—*Taylor v. Brown*, 137

F.2d 654, certiorari denied 64 S.Ct. 194, 320 U.S. 787, 88 L.Ed. 473.

MAXIMUMS

Colo. 1965. For purpose of rule that contractual covenant containing only minimums and maximums is ambiguous per se and may be explained and made definite by extrinsic and parol evidence, "minimums" and "maximums" are those left to future agreement or determination by the parties.—*Christmas v. Cooley*, 406 P.2d 333, 158 Colo. 297.—Evid 450(5).

MAXIMUM SENTENCE

C.A.5 (Ga.) 1969. Several maximum sentences running concurrently are to be treated as a "maximum sentence" for purposes of crediting a prisoner with time spent in jail prior to sentencing under statute interpreted as giving prisoner credit for time spent in jail where he is given "maximum sentence." 18 U.S.C.A. § 3568.—*U.S. v. McCullough*, 405 F.2d 722.—Sent & Pun 1160.

N.D.Ga. 1968. Petitioner who was sentenced to five years as a "general sentence" after conviction on four separate counts none of which carried a potential maximum sentence in excess of five years received "maximum sentence" and was entitled to credit for time spent in jail prior to his conviction.—*McCullough v. U.S.*, 283 F.Supp. 893, affirmed 405 F.2d 722.—Sent & Pun 1159.

N.D.Ga. 1967. Petitioner who was found guilty of multiple offenses none of which carried maximum sentence in excess of five years and who was sentenced to two consecutive five-year sentences, two more consecutive five-year sentences to run concurrently with first two, and eight more five-year sentences to run concurrently with first five years he was in jail received a "maximum sentence" and was entitled to credit for time spent in jail prior to his convictions. 18 U.S.C.A. § 3568.—*Sellers v. U.S.*, 283 F.Supp. 891, affirmed *U.S. v. McCullough*, 405 F.2d 722.—Sent & Pun 1159.

Alaska App. 1991. Defendant receives "maximum sentence" if he is sentenced to maximum term of imprisonment, whether or not sentencing judge restricts or denies parole eligibility, for purposes of sentence review.—*Capwell v. State*, 823 P.2d 1250.—Sent & Pun 1117.

Colo. 2001. "Maximum sentence," as used in phrase, "in no event shall the period of parole exceed the maximum sentence imposed upon the inmate by the court or five years, whichever is less," in statute governing parole for sex offenders, included only a sentence to confinement and excluded any period of parole that an offender was required to serve. West's C.R.S.A. § 17-2-201(5)(a).—*Martin v. People*, 27 P.3d 846, rehearing denied.—Pardon 67.

Ill.App. 2 Dist. 1990. Involuntary commitment by Department of Mental Health for natural life is permissible as "maximum sentence" after finding of not guilty by reason of insanity during exceptionally brutal or heinous homicide. S.H.A. ch. 38,

¶ 1005-2-4(b).—*People v. Palmer*, 140 Ill.Dec. 811, 550 N.E.2d 696, 193 Ill.App.3d 745, appeal allowed 144 Ill.Dec. 264, 555 N.E.2d 383, 132 Ill.2d 552, affirmed in part, reversed in part 170 Ill.Dec. 260, 592 N.E.2d 940, 148 Ill.2d 70.—Mental H 439.1.

La.App. 5 Cir. 1991. Term "maximum sentence" in habitual offender statute means actual term of supervision. LSA-R.S. 15:529.1, 15:529.1, subd. C.—*State v. Williams*, 580 So.2d 448, appeal after remand 609 So.2d 993, writ denied 613 So.2d 992.—Sent & Pun 1400.

N.M.App. 2001. Where the sole reason for maximum sentence criminal commitment to a secure and locked facility is the dangerousness of the defendant, the "maximum sentence" to which a defendant could have been subject, limiting duration of commitment under the Mental Illness and Competency Act, can consist only of basic sentences for the crimes that trigger commitment, and any enhancements of those basic sentences that are expressly based on inherently dangerous criminal conduct as set out in Act. NMSA 1978, §§ 31-9-1.2, 31-9-1.5, subd. D(2).—*State v. Chorney*, 29 P.3d 538, 130 N.M. 638, 2001-NMCA-050.—Mental H 437.

Pa.Super. 1984. Under statute requiring that minimum sentence to be imposed on defendant on whom consecutive sentences are being imposed not exceed one half of maximum sentence imposed, "maximum sentence" imposed is total of maximum sentences on all charges and not longest sentence imposed on single charge. 18 Pa.C.S.A. § 1357 (Repealed).—*Com. v. Duden*, 473 A.2d 614, 326 Pa.Super. 73.—Sent & Pun 503.

Pa.Super. 1941. The "maximum sentence" imposed is the legal and valid sentence if within the limit prescribed by the legislature, and the "minimum sentence" is merely an administrative notice by the court to the executive department calling attention to the legislative policy that when a man's so-called minimum sentence is about to expire the question of grace and mercy ought to be considered and the propriety of granting a qualified release be determined.—*Com. ex rel. Lycett v. Ashe*, 20 A.2d 881, 145 Pa.Super. 26.—Sent & Pun 1126, 1127.

MAXIMUM SENTENCE IMPOSED

Alaska 1977. Phrase "maximum sentence imposed," as employed in statute governing fixing of eligibility for parole at time of sentencing, is intended to authorize sentencing court to fix eligibility for parole based on entire length of imprisonment particular sentence requires. AS 13.15.230(a).—*Thomas v. State*, 566 P.2d 630.—Pardon 54.

MAXIMUM SENTENCE OTHERWISE PROVIDED BY LAW

Or.App. 1994. Statutory authority to impose "maximum sentence otherwise provided by law" referred to presumptive sentence, rather than maximum departure sentence, authorized under applicable sentencing guidelines gridblock and, thus, sentencing court had to make explicit departure findings to support its imposition of sentence in

excess of presumptive sentence. ORS 137.635(1).—*State v. Woodin*, 883 P.2d 1332, 131 Or.App. 171.—Sent & Pun 654, 995.

Or.App. 1992. “Maximum sentence otherwise provided by law,” as used in statute providing that determinate sentence imposed on person who is convicted of felony and who has previous felony conviction shall not exceed maximum sentence otherwise provided by law, means sentence provided in Sentencing Guidelines. ORS 137.635.—*State v. Haydon*, 842 P.2d 410, 116 Or.App. 347.—Sent & Pun 662.

MAXIMUM SPEED REGULATION

N.Y.Sp.Sess. 1940. The provision of Vehicle and Traffic Law creating rebuttable presumption that speed in excess of 40 miles per hour constitutes careless and imprudent driving is not a “maximum speed regulation”. Vehicle and Traffic Law, § 56.—*People v. Gilberg*, 21 N.Y.S.2d 920.—Autos 11.

MAXIMUM SUSTAINABLE YIELD

C.A.1 (Me.) 1977. Term “maximum sustainable yield” as used in context of Fishery Conservation and Management Act refers to scientific appraisal of safe upper limit of harvest which can be taken consistently year after year without diminishing stock so that stock is truly inexhaustible and perpetually renewable. Fishery Conservation and Management Act of 1976, § 2 et seq., 16 U.S.C.A. § 1801 et seq.—*State of Me. v. Kreps*, 563 F.2d 1043, appeal after remand 563 F.2d 1052.—Fish 12.

MAXIMUM TERM

C.A.7 (Ill.) 1997. “Maximum term” authorized for offense, at or near which career offender must be sentenced, was highest statutory maximum after including all enhancements, rather than maximum for “base” offense, and contrary interpretation by Sentencing Commission was incorrect. 28 U.S.C.A. § 994(h).—*U.S. v. Rice*, 116 F.3d 267, rehearing denied.—Sent & Pun 1400.

C.A.1 (Me.) 1996. Under statute requiring sentencing guidelines that specify prison terms for career offenders at or near the maximum term authorized, “maximum term” is the applicable unenhanced statutory maximum. 28 U.S.C.A. § 994(h).—*U.S. v. Lindia*, 82 F.3d 1154.—Sent & Pun 1400.

Mass. 1987. Six-month waiting period imposed by good time provision did not constitute “maximum term” for which returned parole violator could be held under his sentence within meaning of earned good time statute, entitling him to deduction of earned good time days from six-month period rather than from revised maximum expiration date. M.G.L.A. c. 127, §§ 129, 129D.—*Burno v. Commissioner of Correction*, 503 N.E.2d 16, 399 Mass. 111.—Prisons 15(6).

Neb. 1975. Term “maximum term,” within indeterminate sentence statute, refers to maximum term provided by law; thus, indeterminate term of 15 to 25 years for offense of rape was not erroneous on

ground that minimum term of 15 years was in excess of one-third of maximum actually imposed. R.S.Supp.1972, §§ 28–408, 83–1,105(1).—*State v. Ford*, 231 N.W.2d 515, 194 Neb. 400.—Rape 64; Sent & Pun 1127.

Pa.Cmwlth. 2000. Sentence imposed for a criminal offense is the “maximum term”; “minimum term” merely sets date prior to which a prisoner may not be paroled.—*Torres v. Pennsylvania Bd. of Probation and Parole*, 765 A.2d 418, appeal denied 785 A.2d 92, 567 Pa. 718.—Pardon 50; Sent & Pun 1127.

Tex.Crim.App. 1998. Statute requiring release of prisoner to mandatory supervision when calendar time served plus good conduct time equalled “maximum term” of sentence only applied to last of consecutive sentences, and thus did not require that prisoner be released to mandatory supervision and be allowed to begin serving her second consecutive sentence when her calendar time served plus her accrued good conduct time equalled her first sentence, in light of another statutory provision declaring that prisoner cannot begin serving second consecutive sentence until judgment and first sentence “cease to operate” when prisoner has served full calendar time or until parole release date that would have applied to single sentence. *Vernon’s Ann.Texas C.C.P. art. 42.18, § 8(c, d) (Repealed)*.—*Ex parte Ruthart*, 980 S.W.2d 469.—Pardon 51.

MAXIMUM TERM AUTHORIZED

U.S.Me. 1997. With regard to statute directing the United States Sentencing Commission to “assure” that Sentencing Guidelines specify a prison sentence “at or near the maximum term authorized for categories of” adult offenders who commit their third felony drug offense or violent crime, statutory phrase “maximum term authorized” is unambiguous and means the maximum prison term available for the offense of conviction including any applicable statutory sentencing enhancements. 28 U.S.C.A. § 994(h); U.S.S.G. § 4B1.1, comment. (n.2), 18 U.S.C.A.—*U.S. v. LaBonte*, 117 S.Ct. 1673, 520 U.S. 751, 137 L.Ed.2d 1001, modification denied 117 S.Ct. 2505, 521 U.S. 1116, 138 L.Ed.2d 1010.—Sent & Pun 1400.

C.A.10 (Colo.) 2002. Defendant’s sentence was not inconsistent or irrational; although defendant asserted that statutory enhancements were outside of offense statutory maximum, term “maximum term authorized” included statutory enhancements, such as career offender enhancement.—*U.S. v. Torres*, 25 Fed.Appx. 797.—Sent & Pun 1401.

C.A.9 (Wash.) 1996. In statute requiring Sentencing Commission to assure that Guidelines specify sentence to term of imprisonment at or near maximum term authorized for categories of defendants who have been convicted of crime of violence or drug offense or have previously been convicted of two or more such offenses, term “maximum term authorized” means maximum term authorized by statute and does not include enhancements, and thus there is no conflict with Guideline note defin-

ing "offense statutory maximum" as the maximum term of imprisonment authorized for offense of conviction that is a crime of violence or controlled substance offense, not including any increase in that maximum term under sentencing enhancement provision that applies because of defendant's prior criminal record. 28 U.S.C.A. § 994(h); U.S.S.G. §§ 1B1.10(c), p.s., 1B1.10, comment. (n.2), 18 U.S.C.A.—U.S. v. Dunn, 80 F.3d 402, certiorari granted, vacated 117 S.Ct. 2406, 520 U.S. 1249, 138 L.Ed.2d 173, on remand 117 F.3d 1426, opinion withdrawn 118 F.3d 660.—Sent & Pun 1205, 1347.

D.D.C. 1996. "Maximum term authorized," as used in statute requiring that sentencing guidelines specify sentence to term of imprisonment at or near maximum term authorized, means the enhanced maximum punishment when applied to defendant subject to special enhancement penalty provisions; thus, because sentences of career offenders would not be "at or near" that maximum if court were to apply sentencing guideline amendment that revises calculation of offense level for career offenders so that penalty enhancement provisions based on prior criminal history are not taken into account when determining defendant's offense level, such amendment is invalid. 28 U.S.C.A. § 994(h); U.S.S.G. § 4B1.1, comment. (n.2), 18 U.S.C.A.—U.S. v. Thompson, 917 F.Supp. 22.—Sent & Pun 660, 661, 1210.

MAXIMUM TERM AUTHORIZED BY LAW

C.A.9 (Ariz.) 1997. "Maximum term authorized by law," as used in statute which provides that hospitalization of defendant for mental health services in lieu of imprisonment constitutes provisional sentence of imprisonment to maximum term authorized by law for offense for which defendant was found guilty, refers to statutory maximum for offense of conviction, and not to maximum possible sentence under sentencing guidelines for particular defendant. 18 U.S.C.A. § 4244(d); U.S.S.G. § 1B1.1 et seq., 18 U.S.C.A.—U.S. v. Mann, 130 F.3d 1365, opinion withdrawn 138 F.3d 758.—Mental H 439.1.

MAXIMUM TERM OF COMMITMENT

Cal.App. 2 Dist. 1993. "Maximum term of commitment" for person committed as mentally disordered sex offender (MDSO) does not run while that person is on outpatient status. West's Ann. Cal.Welf. & Inst.Code § 6316.1 (Repealed).—People v. Superior Court (Henry), 15 Cal.Rptr.2d 896, 12 Cal.App.4th 1308, opinion modified.—Mental H 465(2).

MAXIMUM TERM OF IMPRISONMENT

Cal. 1993. For juvenile confinement purposes, term "maximum term of imprisonment" is intended to conform at all times to adult determinate sentencing scheme then in existence, regardless of nature and timing of any amendment to that scheme. West's Ann.Cal.Penal Code §§ 1170(a)(2), 1170.1(a), 12022.1; West's Ann.Cal. Welf. & Inst.Code § 726.—In re Jovan B., 863 P.2d

673, 25 Cal.Rptr.2d 428, 6 Cal.4th 801.—Infants 223.1.

MAXIMUM TERM OF SENTENCE

Wash.App. Div. 2 1975. Within statute to effect that court in granting probation may suspend sentence for not exceeding maximum term of sentence, "maximum term of sentence" refers to the sentence pronounced by court and not the maximum possible term court could have provided under statute. RCWA 9.95.210.—State v. Monday, 531 P.2d 811, 12 Wash.App. 429, review granted 85 Wash.2d 1005, affirmed 540 P.2d 416, 85 Wash.2d 906.—Sent & Pun 1945, 1946.

MAXIMUM TERM OF SUCH PRISONER'S SENTENCE

Ariz. 1976. As respects statute providing that every prisoner shall be temporarily released 180 days prior to expiration of maximum sentence and shall remain under control of department of corrections until expiration of maximum term specified in sentence, "maximum term of such prisoner's sentence" is maximum term of years imposed by sentencing court and "expiration of the maximum sentence" is the maximum term of such prisoner's sentence less "double time" and "good time" credits earned by prisoner; accordingly, it is necessary for the department to determine time credits which prisoner has earned, subtract sum of those credits from sentence actually imposed, and arrive at date for expiration of sentence, whereupon statute then requires that prisoner be released 180 days prior to that date and that prisoner remain under control of department until expiration of term of sentence actually imposed. A.R.S. §§ 31-251, 31-252, 31-411, 31-411[B].—Tyree v. Moran, 550 P.2d 1076, 113 Ariz. 275.—Convicts 2.

MAXIMUM TIME PRESCRIBED AS PENALTY FOR OFFENSE

Pa. 1938. Act relating to indeterminate sentences, although providing that maximum limit of sentence should never exceed "maximum time prescribed as penalty for offense," is not inconsistent with general or specific statutory provisions for increased penalty in case of prior convictions, since "maximum time prescribed as penalty for offense" means maximum time prescribed according to whether conviction is the first, second, or third. 18 P.S. §§ 4701, 4704, 5108; 19 P.S. §§ 1057, 1086.—Com. ex rel. Hennessy v. Smith, 196 A. 3, 328 Pa. 308.—Sent & Pun 1057.

MAXIMUM WORK WEEK

Alaska 1980. The phrase "maximum work week," within savings clause of the Fair Labor Standards Act making clear that statutes establishing a higher maximum wage or lower maximum work week are not preempted, refers to numbers of excess hours worked for which an overtime rate must be paid. Fair Labor Standards Act of 1938, § 18(a), 29 U.S.C.A. § 218(a).—Webster v. Bechtel, Inc., 621 P.2d 890, 24 Wage & Hour Cas. (BNA) 1123.—Labor 1271.

N.J.Co. 1972. Under the Fair Labor Standards Act, the term "maximum workweek" does not limit

the number of hours an employee may work; rather, the term refers to that number of excess hours worked for which an overtime rate must be paid. Fair Labor Standards Act of 1938, §§ 7, 7(a) (2) (A), 18(a) as amended 29 U.S.C.A. §§ 207, 207(a) (2) (A), 218(a); N.J.S.A. 34:11-56a4.—State v. Comfort Cab, Inc., 286 A.2d 742, 118 N.J.Super. 162, 20 Wage & Hour Cas. (BNA) 479.—Labor 1282.

MAXWELL HEARING

Ga. 1994. Trial court erred in admitting in malice murder trial evidence that defendant threatened

to kill victim four days before she was murdered without first conducting "*Maxwell* hearing" to determine admissibility of evidence as evidence of similar transaction or prior difficulty between defendant and victim, since Supreme Court could not say that threat allegedly made four days before killing was immediately related in time and place to killing so as to be considered part of single continuous transaction with killing. Uniform Superior Court Rule 31.3(B, E).—Stewart v. State, 440 S.E.2d 452, 263 Ga. 843, appeal after remand 463 S.E.2d 493, 266 Ga. 1, reconsideration denied.—Crim Law 374, 695.5.